



Arbitration CAS 2013/A/3318 Amke Stroman v. Fédération Equestre Internationale (FEI), award of 14 March 2014

Panel: The Hon. Michael Beloff QC (United Kingdom), President; Mrs Sylvia Schenk (Germany); Mr Michele Bernasconi (Switzerland)

Equestrian (jumping)

Doping (nandrolone; estranediol)

Distinction between banned substances and controlled medication substances under the EADMC

Primary duty to ensure that no banned substance is present in the horse's body without any time restriction

Interpretation of Article 1046.5 VR and substances prohibited for use in- and out-of-competition

Substances reclassified by the FEI from banned substances to controlled medication substances

Personal responsibility for the horse and duty of utmost caution or due diligence

Responsibility of athletes to familiarise themselves with the content of the anti-doping regulations

1. **There are numerous examples under the Equine Anti-Doping and Medication Control Rules (EADMC) which draw a clear line between banned substances and controlled medication substances by, *inter alia*, providing separate chapters for each. Particularly material are: (i) the absence of any reference to detection times for banned substances as distinct from controlled medication substances; (ii) the provision for out of competition testing for banned substances but not for controlled medication substances; (iii) the difference in sanctions.**
2. **Not only under Article 2.1.1 of the EADMC is the primary duty on a Person Responsible to ensure that no banned substance is present in the horse's body without any time restriction, but the Veterinary Regulations (VR) upon which reliance was placed do not contradict, but rather complement this primary duty. The Glossary of the VR expressly distinguishes between controlled medication substances being those that are not permitted for use in the horse "*during competition*" and banned substances which are not permitted for use "*at any time*".**
3. **The proposition that if a substance is stated to be prohibited for use in competition, (e.g. Article 1046.5 VR and the relevant FEI FAQ) it is therefore permitted for use out of competition is suggested neither by language nor by logic. The proposition could be sustained if the qualifying word "only" was inserted between the word "is" and the word "prohibited" but not otherwise. Whether the substance is or is not prohibited for use out of competition can only be determined by looking elsewhere in the regulatory scheme.**
4. **The fact that some substances have been reclassified by the FEI from banned substances to controlled medication substances (e.g. morphine) does not mean that a substance which has not been so re-classified (e.g. Anabolin forte) should be treated as**

if it had been. Nor does the fact that a substance may be approved for use in horses in other jurisdictions (e.g. Laurabolin in New Zealand) mean that a similar substance (e.g. Anabolin forte) which is not approved in Germany should be treated as if it was. The List is decisive as to whether a substance is banned or not.

5. It is well established that, even where the Person Responsible is addressing the right target, taking the advice of a vet is ordinarily a necessary, but is never a sufficient step to discharge of a responsibility that is in fact personal to the Person Responsible. There is no more consistent theme in CAS jurisprudence on anti-doping than that the duty of utmost caution or due diligence – the phrases are in context interchangeable – is a non-delegable duty.
6. It is immaterial to the application of Article 10.4.2 EADCMR that the FEI Regulations had not (in contrast to the WADA Code) been translated into German, the only national language in which the athlete is fluent. It is part of the *lex iudica* that athletes, sportsmen or women who are subject to particular anti-doping regimes of their chosen sport must themselves take steps to familiarise themselves with the content of those regimes. That applies especially when competing on international level.

A. Nature of Appeal

1. This is an appeal by Miss Amke Stroman (“the Appellant”) against a Decision of the FEI Tribunal (“the Tribunal”) dated 8th August 2013 (“the Decision”) in so far as it held that the Appellant should be suspended from FEI competition for a period of two years from 16th March 2013 and pay a fine of CHF 3,000.

B. The Parties

2. The Appellant is a professional equestrian competitor, and in particular a professional show jumper.
3. The Respondent is the international governing body for the Equestrian sport disciplines of, *inter alia*, show jumping.

C. Background Facts

4. The primary facts were substantially uncontested. A few further points of detail emerged during the hearing. The following is a synthesis of the relevant matters as found by the Panel on the basis of the written and oral evidence (all of which emanated from the Appellant’s side).
5. The Appellant has competed internationally for the last 16 years, including at European championships.

6. Prior to the Appellant's suspension she rode around 12 competition horses which are stabled at facilities owned and run by Mr Ralf Litz, her partner, in Eiterfeld, Germany ("the Stables"). She and Mr Litz also live at the Stables.
7. The Appellant takes responsibility for the care of those horses assisted by her groom, Mrs Willhardt as well as by Mr Litz who has authority to care for the horses during her absence. Dr Matthias Meyer-Wilmes, founder of the Tierklinik Brockhagen, a trained veterinarian who has a post graduate certificate as "Veterinary specialized for horses" ("the Vet") and also teaches students for such a post graduate certificate since 2012 had been engaged, as required, to provide for medical treatment of some of the horses, on the initiative of their owner.
8. In the middle of January 2013 there was an infection which affected some of the horses at the Stables. One of the horses, i.e. Celentano 34 ("C34"), did not seem to be affected and from 16th to 20th January 2013 the Appellant competed with C34 at a show jumping event, i.e. the Concours de Saut International ("CSI") Five Event in Leipzig.
9. C34 performed poorly at the event in Leipzig and did not eat well.
10. After the event on Sunday 20th January 2013 the Appellant went to visit her mother who lived in Northern Germany; she stayed with her mother until her return to the Stables on 23rd January 2013.
11. In the intervening period, C34 developed a fever which appeared to affect its condition, only recently restored after surgery in summer 2012, and caused it to lose weight.
12. Accordingly, on or about the 21st January 2013 Mr Litz called the Vet and asked for advice as to what to do for C34.
13. As it happened, about two weeks earlier the Vet had left two unmarked syringes at the stable – each containing one milligram of a substance called "Anabolin Forte", a medication that has not been approved for use on horses in Germany – to be given to another horse in the Stable, a freshly gelded stallion; one dose had been duly used for that purpose. The Vet recommended that Mr Litz inject C34 with the second dose which he said would be good for it. He also said, when questioned by Mr. Litz, that the substance would be undetectable within 8-10 days of its injection.
14. Mr Litz asked the Vet several times of what the substance consisted, but the Vet declined to answer.
15. Nonetheless, Mr Litz injected the Horse with the substance whose nature or name at that time he did not know. Mr Litz, in his evidence to the Panel, explained that he then trusted in the experience of the Vet but sensibly accepted that he had appreciated that the Vet's avoidance of providing a straight answer to a straight question was suspicious.
16. To the extent that it is material, the Panel considers that Mr Litz was also influenced by the direction of the owner of C34 that he should do what the Vet recommended.

17. Although an issue was raised by the Respondent that Mr Litz's concern in administering the substance was not to cure C34 of the residue of the fever but rather to enhance its condition for competition purposes, the Panel finds that in the circumstances, those two concerns coincided and cannot be disaggregated. It was the fever that had caused C34 to lose appetite and so also to lose the peak condition for competition and it could have been, the Panel accepts, still influential at the time of the injection.
18. When the Appellant returned to the Stables she was informed by Mr Litz what he had done, and she, for her part, also then called the Vet and enquired as to the nature and name of the substance and the detection time. She told the Panel that it had been her habitual practice to make such inquiry on previous occasions when horses under her care had been subject to some form of medical treatment. Once again, the Vet avoided answering the question on the name of the substance, but repeated his earlier advice that it would do C34 good, and that it would be undetectable after 8-10 days.
19. The Appellant on the basis of the advice as to detectability cautiously (and again consistent with what she told the Panel was her habitual practice) did not ride C34 competitively until an event taking place on 23rd to 24th February 2013 and so approximately 30 days after the date of the injection, i.e. the Concour de Saut National ("CSN"-B) in Ebreichsdorf, Austria.
20. On the 14th to 17th March 2013, that is to say a full 52 days after the injection she rode C34 at the CSI4* in Braunschweig, Germany.
21. On 16th March 2013, a urine sample was taken from C34 at the Braunschweig Event and on 3rd/4th April 2013 was analysed at the HFL laboratory in the United Kingdom and found to contain both Nandrolone and its main metabolite Estranediol ("the positive test").
22. Nandrolone is an anabolic steroid with well-known performance enhancing properties. It is listed as a banned substance on the FEI equine prohibited substances list ("the List").
23. On 17th April 2013, the FEI Legal Department notified the Appellant of the positive test.
24. Mr Litz then again enquired of the Vet as to the identity of the substance injected into the horse.
25. On that occasion, belatedly, the Vet told him that it was Anabolin Forte.
26. It is common ground between the parties that it was the injection with Anabolin Forte on or about the 21st April 2013 which was responsible for the positive test.

D. Proceedings before the Tribunal of the FEI

27. Upon notification to the Appellant by the FEI Legal Department of the positive test, and of an apparent violation based on the presence of the two banned substances in C34's urine and of, in consequence, her provisional suspension from competition she requested a preliminary hearing before the Tribunal of the FEI.

28. On 24th April 2013, at the hearing before the FEI Tribunal the Appellant did not dispute the presence of the two banned substances in the Horses sample, and waived her right to have the horse's B sample analysed. Accordingly, the FEI Tribunal maintained the provisional suspension.
29. On 11th June 2013, the FEI Tribunal held a full hearing on the merits on the alleged violation of the FEI equine anti-doping rules ("EADCMR").
30. The Appellant was represented at the hearing by Dr Gattiker, and gave evidence on her own behalf. Mr Litz also gave evidence. The groom, the Appellant's mother, C34's trainer and C34's previous vet all testified by telephone.
31. On 8th August 2013, the FEI Tribunal issued the Decision in which it confirmed (as had not been disputed) that the Appellant had committed an anti-doping violation under Article 2.1 of the EADCMR in that two banned substances, one being a metabolite of the other, were present in her horse's sample for which she was (as has also not been disputed) the Person Responsible.
32. It had also been accepted that the Appellant had established to the requisite standard (balance of probabilities) how the banned substances got into the horse's system. The issue before the FEI Tribunal (as it has been before the Panel) was whether the Appellant bore no significant fault or negligence for the violation within the meaning of Article 10.4.2 of the EADCMR.
33. The FEI Tribunal rejected the Appellant's claim that she was entitled to the benefit of that Article for the reasons set out in its full judgment, disqualified C34 and the Appellant from the event at Braunschweig and all other events after the date of the positive sample until the commencement of the provisional suspension and imposed, *inter alia*, the following sanctions:
 - a two year period of ineligibility from 16th March 2013;
 - a fine of CHF 3,000.

Only the two year period of suspension and the sum of the fine are the subject of the present Appeal.

E. The proceedings before CAS

34. On 7th September 2013, the Appellant filed her Statement of Appeal in accordance with Articles R47 of R48 of the Code of Sports-related Arbitration of the Court of Arbitration for Sport ("the Code").

On 19th September 2013, the Appellant filed her Appeal Brief, in accordance with Article R51 of the Code.

On 23rd October 2013, the Respondent filed its answer in accordance with Article R55 of the Code.

On 4th November 2013, the Respondent filed copies of the audio recordings of the FEI Hearing in accordance with Article R56 of the Code.

On 16th December 2013, the Appellant confirmed the contents of her Evidence-in-Chief (which was the Statement that she had submitted to the FEI Tribunal) and indicated the facts she contested (which, on analysis, were conclusory rather than primary) in accordance with Article R56 of the Code and the Panel's instructions.

35. On 9th January 2014, a Hearing was held at the Headquarters of the Court of Arbitration for Sport ("the CAS") at the Avenue de Beaumont 2, 1012, Lausanne, Switzerland.

The Appellant was represented by Dr Gattiker and by Dr Weyers. The Appellant and Mr Litz gave evidence. Dr Weyers' witness statement was admitted by consent without the need for confirmatory or explanatory oral testimony.

The Respondent was represented by Mr Rentsch of the FEI, assisted by Mr Taylor and Ms Pagé. Mr Taylor had conduct of the oral hearing on the Respondent's behalf. No witnesses were called by the Respondent.

36. The Panel consisted of the President, the Honourable Michael J Beloff QC, Barrister in London, United Kingdom, Mrs Sylvia Schenk, Attorney at Law in Frankfurt-am-Main, Germany, appointed by the Appellant, and Mr Michele A. R. Bernasconi, Attorney at Law in Zurich, Switzerland, appointed by the Respondent, and was assisted by Mr Christopher Singer, Counsel to the CAS.
37. At the outset of the Hearing both parties agreed that they had no objection to the composition of the panel, and at the conclusion of the Hearing confirmed that the proceedings had been fairly conducted and that due respect had been paid to their right to be heard.

F. Position of Parties and Relief Sought

38. The Appellant argued that she had established that she bears no significant fault or negligence for the violation, and that therefore she should not have been suspended for more than 12 months.

Accordingly, she asked that the Decision be annulled, that she should not be suspended for more than 12 months, that the fine should not exceed CHF 2,000 and that the Respondent should bear the costs of the Arbitration and her own legal costs. By a letter dated 8 March 2014, the Appellant denied that the CAS was the competent body to hear her case.

39. The Respondent asked the Panel to dismiss the Appeal and to leave the Decision undisturbed.

It did not seek any order for costs against the Appellant even in the event that the Appeal wholly failed (an issue raised in the Answer as to whether even if the Appeal succeeded, as a regulator acting in good faith, the Respondent should not bear any of the Appellant's costs also did not fall for consideration).

40. The main arguments of the parties are summarised in the section “Merits” below, but all arguments, whether expressly there referred to or not, have been carefully considered.

G. Jurisdiction

41. Article 12 of the EADMCR (First Edition effective 5th April 2010 with updates effective 1st January 2013) provides for an appeal to CAS as it states as follows:

“Article 12 APPEALS

12.1 Decisions Subject to Appeal

Decisions made under these EAD Rules may be appealed as set forth below [...]

12.2 Appeals from Decisions regarding EAD Rule Violations, Consequences, and Provisional Suspensions

[...]

12.2.1 *In cases arising from participation in an International Event or in cases involving FEI-registered Horses, the Decision may be appealed exclusively to CAS in accordance with the provisions applicable before CAS.*

[...]”.

42. The jurisdiction of CAS has, on late notice (see par. 38 above), been contested by the Appellant, after she had expressly confirmed jurisdiction of the CAS by the signature of the Order of Procedure on 6th January 2014, on the basis of “[r]ecent decisions by states courts” in Germany said to support the proposition that the consent of athletes to be subjected to the disciplinary powers and procedures of sports governing bodies is vitiated by the absence of choice if they wish to participate in the sport regulated by such bodies.
43. In accordance with Article 186 of the Swiss Private International Law, the CAS has power to decide upon its own jurisdiction. The Panel is not bound by unspecified “[r]ecent decisions by states courts” in another jurisdiction whether or not on their proper interpretation they support the Appellant’s argument. Swiss law governs the jurisdiction issue and the jurisdiction of CAS has been confirmed on numerous occasions by the Swiss Federal Tribunal (see e.g. Decision of 22 March 2007, 4P.172/2006, Erw. 4.3.2.2 et seq. published in the digest of SFT decisions under BGE 133 III 325 and Decision of 9 January 2009, 4A_460/2008, Erw. 6.2 et seq.). Moreover, the Panel finds that the Appellant’s late denial of CAS jurisdiction to be perverse not only because she signed the Order of Procedure and thereby acknowledged the jurisdiction of the CAS, but also because it was she who resorted to the CAS, instead of any other authority she deemed competent, to review the decision of the FEI Tribunal. Had the Appellant considered that the CAS did not have jurisdiction to examine the present case, she could have had withdrawn her appeal at CAS and submitted it to another tribunal. The Panel deems the Appellant’s denial of jurisdiction without merit in the present arbitration.

44. The jurisdiction of CAS has not been contested by the Respondent and was confirmed by the signature of the Order of Procedure by it on 6th January 2014.

H. Admissibility

45. Under Article R49 of the Code, in the absence of a time limit set in the statutes or regulations of the Federation concerned, the time limit for appeal shall be 21 days from the receipt of the decision appealed against. The FEI General Regulations (“GR”) under Article 165.2 GR provided a time limit of 30 days to appeal to CAS. On the basis of the procedural chronology, the Appeal is accordingly admissible.

I. Applicable Law

46. In accordance with Article R58 of the Code, the Panel must decide the dispute according to the applicable regulations and rules of law chosen by the parties. The parties relied on various regulations of the FEI, i.e. the GR, the EADMDR and the FEI Veterinary Regulations (“VR”) (collectively “the FEI Regulations”). Both the EACMDR and the VR, as sports rules, were issued by the General Assembly of the FEI pursuant to powers under Article 10(1)(xviii) of the FEI Statutes. The Panel considers the FEI Statutes and the FEI Regulations to be applicable for the purposes of Article R58 of the Code and that Swiss law applies subsidiarily.

J. Standard of Review

47. Article R57 of the Code provides that on an appeal “*the Panel has full power to review the facts and the law*”. It may confirm the decision appealed against, issue a new decision which replaces it or annul it and refer the case back to the body which took that decision. Accordingly, the Panel does not consider it necessary to subject the Tribunal’s reasoning to detailed analysis given its own freedom under Article R57 of the Code to consider the case *de novo*. Its mandate is to determine whether the Tribunal’s conclusion on the part of the sanction, the subject of the appeal, by whatever route it was reached, should be upheld or rejected. For the same reason the allegations in the Appellant’s written brief that her right to be heard had not been respected by the Tribunal (e.g. paragraphs 99, 100 and 102) even if made out, are of no consequence given the full and fair hearing she enjoyed before the Panel.

K. Legal Instruments

48. The EADMDRs are based on the World Anti-Doping Code (“the WADA Code”): see the introduction “*these Equine Anti-Doping and Controlled Medication Regulations ... are adopted and implemented in conformity with the undertakings of the FEI governing bodies in the spirit of the World Anti-Doping Code (2009 Version)*”. Accordingly, they fall to be interpreted, where possible, consistently with the WADA Code.
49. The defined term “Person Responsible”, used in several FEI regulations as well as in the present Award, is defined in Article 118.3 of the GR (23rd Edition 1st January 2009 updates effective 1st January 2013) that reads as follows:

“The Person Responsible shall be the Athlete who rides (...) the Horse during an Event”.

50. The EADCMR Rules provide as far as material as follows:

“Article 2 EAD RULE VIOLATIONS

Persons Responsible and/or their Support Personnel shall be responsible for knowing what constitutes an EAD Rule violation and the substances and methods which have been included on the Equine Prohibited Substances List and identified as Banned Substances.

2.1 The presence of a Banned Substance or its metabolites or markers in a Horse’s Sample.

2.1.1 *It is each Person Responsible’s personal duty to ensure that no Banned Substance is present in the Horse’s body (...) it is not necessary to ensure that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1.*

(...)

2.1.3 (...) *the presence of any quantity of a Banned Substance or its Metabolites or Markers in a Horse’s Sample shall constitute an EAD Rule violation.*

(...)

3.1 Burdens and Standards of Proof(...) *Where these EAD Rules place the burden of proof upon the Persons Responsible (...) to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.*

(...)

4.1 Incorporation of the Equine Prohibited Substances List *These EAD Rules incorporate the Equine Prohibited Substances List (“the List”) which is published and revised by the FEI from time to time (...)*

Article 10 SANCTIONS

(...)

10.2 Ineligibility and Fine for Presence (...) of Banned Substances (...)

The Sanction imposed for a violation of Article 2.1 (Presence of a Banned Substance or its Metabolites or Markers) (...) shall be as follows unless the conditions for eliminating, reducing or increasing the Sanction provided in 10.4. or 10.5 are met.

First Violation: Two (2) years Ineligibility; (...)

10.4 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances

(...)

10.4.2 *If a Person Responsible (...) establishes in an individual case that he or she bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility and other Sanctions (...) may be reduced in regard to such Person, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable.*

(Article 10.4.2 is subject to the pre-condition which the Panel considers satisfied, as already noted in this case.)

“when a Banned Substance or its Metabolites or Markers is detected in a Horse’s Sample in violation of Article 2.1 (...) the Person alleged to have committed the EAD Rule violation must also establish how the Banned Substance or its Metabolites or Markers entered the Horse’s system in order to have the period of Ineligibility reduced.

Article 10.4.3 Substantial Assistance in Discovering or Establishing EAD Rule Violations *The FEI Tribunal may (...) suspend a part or all of the period of Ineligibility imposed in an individual case where the Person Responsible (...) has provided Substantial Assistance to the FEI (...) or professional disciplinary body which results in the FEI discovering or establishing an EAD Rule Violation by another Person or which results in a criminal or disciplinary body discovering or establishing a criminal offence or the breach of professional rules by another Person. Such Substantial Assistance must be independently corroborated in order to reduce the period of Ineligibility and under no circumstances should it amount only to blaming another Person or entity for the alleged EAD Rule Violation.”*

Appendix 1 to the EADCMR Definitions provides, *inter alia*:

“Equine Prohibited Substances List The list identifying the Banned Substances/Controlled Medication Substances (...) as published from time to time under the direction of the Secretary General (...)

No Fault or Negligence

The Person Responsible (...) 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 administered to the Horse, or the Horse’s system otherwise contained, a Banned Substance (...)

No Significant Fault or Negligence

The Person Responsible (...) 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.

Substantial Assistance

For the purposes of Article 10.5.3 of the EAD Rules (...) a Person providing Substantial Assistance must: (1) fully disclose in a signed written statement all information he or she possesses in relation to EADCM Regulation violation(s); and (2) fully cooperate with the investigation and adjudication of any case related to that information, including, for example, presenting testimony at a hearing if requested to do so by an Anti-Doping Organisation or Hearing Panel. Further, the information provided must be credible and must comprise an important part of any case which is initiated or, if no case is initiated, must have provided a sufficient basis on which a case could have been brought”.

The VR 13th Edition, effective 1st January 2013, deals at Chapter V with equine treatment and supportive therapies during FEI events.

Article 1046 provides:

“Treatment with Controlled Medication Substances

- 1) *Controlled medication substances as listed on the FEI Equine Prohibited Substance List (PEPSL) which are administered to Horses during or close to an Event may result in an Adverse Analytical Finding in accordance with the EADCMRs.*
- 2) *During Events, the administration of treatments and supportive therapies must be authorised by the VC/VD before administration, using the appropriate Veterinary Form.*
- 3) *The treatment or supportive therapy, if authorised, may only be administered by an FEI veterinarian with the exception of those substances administered orally or by nebulisation.*
- 4) *The use of a Controlled Medication Substance may only be authorised for treatment during an Event in exceptional circumstances, in accordance with these VRs, the EADCMRs and GRs.*
- 5) *The use of Banned Substances prior to or during an event is always strictly prohibited. (Emphasis added by the Panel)*
- 6) *No intra-articular administration of any medication is allowed during FEI Events.*
- 7) *Treatments administered before an FEI Event (e.g. during transport) may be retroactively authorised, using the appropriate Veterinary Form (in accordance with these VRs) by the VC/VD, when appropriate, on arrival at the Event (...).”*

Article 1055.5 VR states:

Banned Substances are substances that have been deemed by the FEI List Group to have

- (a) *no legitimate use in the competition Horse and/ or*
- (b) *have a high potential for abuse”.*

Article 1055.6 VR states:

“Controlled Medication Substances are substances deemed by the FEI List Group to have therapeutic value and/or to be commonly used in equine medicine. However, Controlled Medication Substances have the potential to;

- a) affect performance, and/or*
- b) be a welfare risk to the Horse”.*

It is not necessary for the Panel to determine whether Anabolin Forte falls under Article 1055.5 (a) and/or (b) since it is indisputably on FEI’s list of banned substances.

Annex VI TO VR GLOSSARY provides:

“Prohibited Substances

Substances that are not permitted for use in the competition Horse, either (a) during competition (Controlled Medication Substances) or (b) at any time (Banned Substances) Prohibited Substances fall into two categories, Banned Substances and Controlled Medication Substances”.

L. Merits

- 51. The key issue is whether the Appellant has established that she bears no significant fault or negligence in respect of the manner in which the prohibited substance entered the horse. If she has, there are ancillary issues as to the degree to which the period of ineligibility, insofar as it exceeded 12 months, should be reduced and whether, in the alternative or in any event, the Appellant can take advantage of Article 10.4.3 of the EADCMR (the Substantial Assistance Rule).
- 52. The Appellant’s main argument was that
 - (i) on the proper construction of the FEI legal instruments, when read as a whole, there was no absolute ban on the use of so called banned substances (for this purpose to be contrasted with controlled medication substances) out of competition.
 - (ii) that the administration of a banned substance to a competition horse is not prohibited as long as it is (a) for a legitimate medical reason and (b) the substance is no longer detectable in the horse’s system when it competes.
 - (iii) her fault or negligence was not significant as she had done her best to avoid C34 competing with a prohibited substance still present in its body by waiting until C34’s next competition for triple the detection time indicated to her by the Vet upon whom, given his expertise and experience, she reasonably relied.
- 53. The Panel has no hesitation in rejecting this ingenious argument for reasons substantially advanced by the Respondent.

54. It is not necessary to multiply the examples under the EADMCR which draw a clear line between banned substances and controlled medication substances by, *inter alia*, providing separate chapters for each. Particularly material to the present appeal are:
- (i) the absence of any reference to detection times for Banned Substances as distinct from Controlled Medication Substances;
 - (ii) the provision for out of competition testing for Banned Substances but not for Controlled Medication Substances;
 - (iii) the difference in sanctions.
55. Not only under Article 2.1.1 of the EADCMR is the primary duty on a Person Responsible to ensure that no banned substance is present in the horse's body without any time restriction, but the VR upon which reliance was placed do not contradict, but rather complement this primary duty.
56. The Glossary of the VR expressly distinguishes between controlled medication substances being those that are not permitted for use in the horse “**during competition**” and banned substances which are not permitted for use “**at any time**”. The Appellant's argument impermissibly invites the Panel to ignore the Glossary.
57. The basis for that resistible invitation lay in sub-paragraph 4 of Article 1046 VR which provides that “*the use of banned substances prior to or during an event is always strictly prohibited*”. This however is the phraseology of prevention, not of permission.
58. The proposition that if a substance is stated to be prohibited for use in competition, (e.g. Article 1046.5 VR and the relevant FEI FAQ) it is therefore permitted for use out of competition is suggested neither by language nor by logic. The proposition could be sustained if the qualifying word “only” was inserted between the word “is” and the word “prohibited” but not otherwise. Whether the substance is or is not prohibited for use out of competition can only be determined by looking elsewhere in the regulatory scheme.
59. There is, however, no provision of any FEI Regulations which states that banned substances may be used for a horse at any particular time.
60. The fact that some substances have been reclassified by the FEI from banned substances to controlled medication substances (e.g. morphine) does not mean that a substance which has not been so re-classified (e.g. Anabolin forte) should be treated as if it had been. Nor does the fact that a substance may be approved for use in horses in other jurisdictions (e.g. Laurabolin in New Zealand) mean that a similar substance (e.g. Anabolin forte) which is not approved in Germany should be treated as if it was. The List is decisive as to whether a substance is banned or not.
61. Moreover even if, as the Respondent conceded, the phrase “*prior to*” in paragraph 5 of Article 1046.5 VR indicated some proximity to an event, the presence of that particular paragraph in that particular Article is explicable by the context (i.e. an indication of when and under what

circumstances controlled medication substances could be used in competition), and constituted a reminder that there was no equivalent permission granted for the use of banned substances whether during an event or prior to it, whereas, for example in paragraph 7 of the same Article, it was made clear that in certain circumstances treatment administered before an FEI Event could be retrospectively authorised.

62. The Panel would add that, according to the chronology of events, the injection was well arguably administered prior to the event within the meaning of the provision under consideration, at which the positive sample was taken being only 51 days, before it. (Additionally C34 had already competed at the CSN-B* Ebreichsdorf event in Austria on 23rd to 24th February 2013 that is to say only 30 days after the injection). However, for reasons already articulated, this matters not.
63. As the Respondent noted, if the Appellant's contention were correct, there could be no reason whatsoever for the provision of out of competition testing which vouched for by Article.5.1 of the EADCMR (which the Panel need not quote). All that would be necessary would be an in competition test to detect the presence or otherwise of a prohibited or banned substance in the horse's system.
64. The fact that the FEI uses its resources to concentrate on in competition testing, unless there is some particular ground for suspecting a Person Responsible during an out of competition time zone, does not affect the meaning of the relevant rules.
65. The Panel accepts that any ambiguity in a disciplinary rule should be construed against the regulator who made it, i.e. *contra proferentem*. It notes that the Appellant's counsel only resorted to this principle of interpretation as an alternative to her contention that the rules were *acte claire* in her favour. The Panel for its part discerns no ambiguity and considers that the rules clearly support the Respondent's position.
66. That being so, the Appellant's argument that she satisfied the criteria of Article 10.4.2 EADCMR was inherently flawed and fails *in limine*, since on her own admission she did not take any care to ensure that no banned substance was administered to – and thus “present in” – C34 (“the right target”), but only that such banned substance as may have been used would no longer be detectable at the time of competition (“the wrong target”).
67. Whether (as it is **not** the case here) the Person Responsible is seeking to establish that she bears no fault or negligence, whether (as **is** the case here) she restricts herself to seeking to establish that she bore no significant fault or negligence, the requisite care on the plain wording of the Definitions, pertinent to Articles 10.4.1 and 10.4.2 EADCMR which must be read together, must be directed to the issue of whether she could not reasonably have known or suspected that she had administered to the C34 or that C34's system otherwise contained, a banned substance.
68. No matters which are not germane to that issue are relevant to reduction of ineligibility, pursuant to Article 10.4.2 EADCMR, however sympathetic they may seem outside of that confining context or in isolation.

69. There are two questions only posed by Article 10.4.2. EADCMR: What care did the Person Responsible take, and if the care fell short of an otherwise acceptable standard, why did she not do more?
70. The essential case made by the Appellant was that she was entitled to rely upon the Vet.
71. It is well established that, even where the Person Responsible is addressing the right target, taking the advice of a vet is ordinarily a necessary, but is never a sufficient step to discharge of a responsibility that is in fact personal to the Person Responsible (cf. CAS 2013/A/3124 para 12.42.).
72. There is no more consistent theme in CAS jurisprudence on anti-doping than that the duty of utmost caution or due diligence – the phrases are in context interchangeable – is a non-delegable duty (cf. CAS 2007/A/1395).
73. It was not properly suggested that the fact that it was Mr Litz who injected C34 in the manner and with the knowledge (or lack of knowledge) that he had, exculpates the Appellant. She was the Person Responsible.
74. In any event, the Appellant's reliance on the fact that she tripled with the withdrawal time recommended by the Vet is not relevant because, the Panel repeats, that is not the matter to which her duty of care should have been directed. The Panel would add that a person who seeks or relies upon advice about detection times lays him or her-self open (it may be unfairly) to the suspicion that his (or her) real concern is not to avoid a breach of the anti-doping rules but to avoid its discovery.
75. The Panel notes that the then unidentified substance administered to C34 was in an unmarked syringe and originally intended to treat a different horse for a different condition – another factor properly relied on by the Respondent as being at odds with any exercise of utmost caution.
76. The Appellant acknowledged in cross examination before the Panel that she knew that there was a difference between the two types of substances, i.e. banned substances and controlled medication substances, but had not found out what it was - something again inconsistent with her duty of care as a Person Responsible.
77. The Appellant also variously relies as a way of mitigation on a further miscellany of factors:
 - the lack of evidence of harmful impact upon and/or of welfare concerns about C34 at any material time;
 - absence of any performance enhancing or therapeutic effect in the levels of the banned substance found in C34's urine (this was in point of fact controversial);
 - her lack of intention to gain an unfair competitive advantage but, on the contrary, proper concern for C34's health;

- the loss of income in consequence of her suspension;
 - the Appellants prompt admission of a violation of the anti-doping rules and her cooperation with the FEI after the positive test;
 - her previously clean record.
78. None of these matters have, however, anything to do with whether or not there had been an adequate discharge of the duty of care. This is confirmed in CAS 2013/A/3124, para 12.50. The Panel notes that a prompt admission does bear on the start date for any suspension. In fact, the prompt admission by Appellant was duly taken into account by the FEI Tribunal for that purpose, and the selected start date is not the subject of any Appeal to the Panel.
79. Equally immaterial to the application of Article 10.4.2 EADCMR is the fact that the FEI Regulations had not (in contrast to the WADA Code) been translated into German, the only national language in which the Appellant is fluent. There again is CAS authority to the effect that it is part of the *lex ludica* that athletes, sportsmen or women who are subject to particular anti-doping regimes of their chosen sport must themselves take steps to familiarise themselves with the content of those regimes. That applies especially when competing on international level, e.g. in international FEI events, as the Appellant does for 16 years now and did at the CSI4* in Braunschweig where the sample was taken (cf. CAS 2010/A/2268, para. 74 et seq.).
80. CAS 2013/A/3124 was heavily relied on by the Appellant. It is sufficient to note, without subjecting the decision to detailed analysis, that its whole thrust was (correctly) to differentiate between, where a breach had been established, the sanctions regime applicable to use of banned substances and that to use of controlled medication substances (paras 10.9-10.15). The Sole Arbitrator there held that only where the breach refers to controlled medication substances can any mitigating matters of the kind the Appellant prays in aid for herself be taken into consideration. Further, given the absence of any minimum period of ineligibility in the controlled medication as distinct from the banned substances regime, the concept of proportionality was deployed to determine whether the sanction was commensurate with the seriousness of the offence (CAS 2013/A/3124, paras 10.24-10.31).
81. Further, the Panel notes that Article 10.5.2 of the current WADA Code and Article 10.4.2 EADCMR have been upheld as being, at least in principle, proportionate (cf. CAS 2013/A/3124, paras 12.64 to 12.65; see also CAS 2005/C/976 & 986).
82. The case of *Werth*, FEI Tribunal 19/2/2009, upon which the Appellant also relied, where the decision was a suspension of 6 months, being far less than that imposed in the Appellant's case, was decided under previous FEI regulations. The Panel repeats that in any event it is generally an unproductive exercise to seek to compare different cases decided at different times and/or under different rules and/or by different bodies, whose facts are not exactly comparable to the case under appeal and which do not lay down rules of general application (cf. CAS 2013/A/3124 para 12.23). Even accepting that Ms Werth was fortunate in the leniency of her suspension imposed by the FEI Tribunal that cannot be a basis for overruling

another decision of the FEI Tribunal about the Appellant which the Panel considers on its own facts to be correct and proportionate.

83. Finally, in the Panel's view, the Appellant is unable to take advantage of Article 10.4.3 EADCMR.
84. Although the policy underlying the provision – the encouragement of whistle-blowers to the greater benefit of clean sport – is obvious, equally the hurdles to gain advantage of it are set high. In the Panel's view, the Appellant conspicuously fails to surmount them.
85. First, no substantial assistance of the kind referred to in it has been provided by or on behalf of the Appellant.

No information has been provided to any criminal or disciplinary body which has enabled such body to discover or establish an offence. Apart from the fact that the Vet apparently gave inadequate and faulty advice to the Appellant, the Appellant has no evidence (as distinct from surmise) that he has been guilty of giving the same advice on other occasions.

86. Secondly, the FEI Rule requires independent corroboration of any such assistance as is given; given the relationship of Mr Litz and the Appellant, the fact that he as well as the Appellant disclosed the Vet's malpractice, could constitute corroboration, but not "independent corroboration".
87. Thirdly, the Appellant had to disclose the identity of the Vet and what he had advised Mr Litz as part of her argument before the FEI Tribunal and before the Panel, and so is unable to satisfy the prerequisite that the assistance was not simply in the form of blaming some other person for the offence alleged against the Person Responsible.
88. Fourthly, the matter is one for the discretion of the FEI Tribunal (and, accordingly, the Panel); this issue was not raised before the Tribunal (and only ventilated at all during the hearing by a question from the Panel), but even had it been, the Panel does not consider that the FEI Tribunal would (or should) have acceded to any claim for reduction of the suspension based upon it.
89. Whether the Vet will be subject to proceedings before a domestic medical board in respect of the advice he gave Mr Litz is on the evidence put before the Panel at the hearing in the realm of speculation, not certainty. But at present, the Appellant can claim no credit for that possibility evaluated against the criteria of Article 10.4.3 EADCMR.
90. Finally, although the Appellant has indicated an intention to file civil proceedings against the Vet for the damage caused by the advice that he gave Mr Litz, such proceedings have not yet been instituted, and they would be designed to assist her not a private or public regulatory body.
91. There is, in summary, no basis for interfering with the suspension imposed on the Appellant by the Tribunal, nor with the concomitant fine which seems in no way anomalous.

92. Accordingly, the Panel finds that the sanctions imposed by the FEI Tribunal are in line with the applicable rules and not disproportionate. Therefore, the Panel holds that the Appealed Decision must be upheld in its entirety, without any modification.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Amke Stroman on 7 September 2013 against the Decision issued on 8 August 2013 by the Tribunal of the FEI is dismissed.
2. The Decision issued on 8 August 2013 by the Tribunal of the FEI is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.