

Background

1. On 30 October 2021, Sincere Harraway (“the athlete”) was tested following a rugby league match. The result was positive for 11-nor-delta-9-tetrahydrocannabinol-9-carboxylic acid (a metabolic of THC) which is a specified substance, prohibited in-competition, under class S8 Cannabinoids on the WADA Prohibited List 2021. On the doping control form, he listed medications and substances he had taken which included marijuana, Panadol and Ibuprofen.
2. He was advised of his positive test on 3 February 2022. He had left New Zealand and moved to Australia.

Proceedings

3. On 3 February 2022, Drug Free Sport New Zealand (DFSNZ) filed proceedings alleging a violation of Rule 2.1 and 2.2 of the Sports Anti-Doping Rules 2021 (SADR).
4. The athlete was provisionally suspended without opposition on 8 February 2022. On 18 February 2022, DFSNZ filed substantive anti-doping rule violation proceedings with a memorandum seeking directions regarding the application of SADR 10.2.4 which provides for a reduced sanction if an athlete completes an approved ‘substance of abuse’ treatment programme. This is the first case in New Zealand to consider this Rule introduced by the revised 2021 Code, which encourages a proactive approach to substance abuse treatment, and emphasises athlete health.
5. SADR 2021 recognises “substances of abuse” as illegal drugs misused in society, and frequently used with no sports enhancement context. The Rules provide flexibility for a substantial reduction in sanction if used out-of-competition, and unrelated to sports performance as in this case, and a further reduction is possible if an approved treatment programme is completed.
6. The athlete admitted the violation and requested the opportunity to participate regarding sanction. He said that he was in the process of registering with a doctor for drug education assessment under SADR 10.2.4.1 and meanwhile the provisional suspension ran on.
7. On 7 March 2022, a telephone conference was held but the athlete had been unable to progress the medical assessment needed to engage in a treatment programme.
8. On 25 March a Minute was issued responding to DFSNZ’s proposed approach. The Tribunal accepted its advice that an athlete was unlikely to benefit from the reduced sanction which SADR 10.2.4.1 offered because (at that time) there were no treatment programmes available, and it did not seem they could be completed in less than one month if there were. The Acting Chair suggested a possible outcome that a one month

sanction may have provisional effect, but if the treatment programme was not completed the further two months would be imposed, unless mitigating circumstances warranted an extension.

9. On 28 March 2022 the athlete advised that he had returned to New Zealand and while he had been unable to access medical advice in Australia, he had made an appointment for 29 March to discuss a treatment programme. Counsel for the parties indicated they would advise the Tribunal if the athlete could and would engage in a programme which DFSNZ approved.
10. The athlete attended a qualified medical practitioner and on 7 April provided a certificate of assessment by the He Waka Tapu Trust. He had enrolled in a eight week Takahi Te Taniwha programme recommended by the medical practitioner. Counsel filed a joint memorandum by which DFSNZ approved the treatment programme and accepted a one month sanction as appropriate.
11. The course suggested by counsel was that the provisional suspension be set aside while the programme is completed and if so, with the suspension then in effect for two months the one month suspension would be formally imposed, but already spent. If the programme was not completed the balance of the three month suspension would be imposed. The Tribunal is satisfied it is able to accept the merits of this without the need for a hearing and as explained below has taken a slightly different course than proposed.

Rules

12. SADR (2021) provides:

4.2.3 *Substances of Abuse*

For purposes of applying Rule 10, *Substances of Abuse* shall include those *Prohibited Substances* which are specifically identified as *Substances of Abuse* on the *Prohibited List* because they are frequently abused in society outside of the context of sport.

10.2.4.1 where an ADRV involves a *Substance of Abuse*:

If the *Athlete* can establish that any ingestion or *Use* occurred *Out-of-Competition* and was unrelated to sport performance, then the period of *Ineligibility* shall be three months *Ineligibility*.

In addition, the period of *Ineligibility* calculated under this Rule 10.2.4.1 may be reduced to one month if the *Athlete* or other *Person* satisfactorily completes a *Substance of Abuse* treatment program approved by DFSNZ. The period of *Ineligibility* established in this Rule 10.2.4.1 is not subject to any reduction based on any provision in Rule 10.6.

Comment on Rule 10.2.4.1 states:

The determinations as to whether the treatment program is approved and whether the Athlete or other Person has satisfactorily completed the program shall be made in the sole discretion of the Anti-Doping Organisation. This Article is intended to give Anti-Doping Organisations the leeway to apply their own judgment to identify and approve legitimate and reputable, as opposed to “sham”, treatment programs. It is anticipated, however, that the characteristics of legitimate treatment programs may vary widely and change over time such that it would not be practical for WADA to develop a mandatory criteria for acceptable treatment programs.

Rule 7.4.1 reads:

7.4.1 Mandatory *Provisional Suspension* after an *Adverse Analytical Finding* or *Adverse Passport Finding*

When an *Adverse Analytical Finding* or *Adverse Passport Finding* (upon completion of the *Adverse Passport Finding* review process) is received for a *Prohibited Substance* or a *Prohibited Method*, other than for a *Specified Substance* or *Specified Method*, a *Provisional Suspension* shall be imposed promptly upon or after the review an notification required by Rule 7.2.

A mandatory *Provisional Suspension* may be eliminated if:

- (i) the *Athlete* demonstrates to the *Sports Tribunal* that the violation is likely to have involved a *Contaminated Product*, or
- (ii) the violation involves a *Substance of Abuse* and the *Athlete* establishes entitlement to a reduced period of *Ineligibility* under Rule 10.2.4.1.

The Sports Tribunal's decision not to eliminate a mandatory *Provisional Suspension* on account of the *Athlete's* assertion regarding a *Contaminated Product* shall not be appealable.

Decision

13. Cannabis is a specified substance prohibited in competition under class S8 Cannabinoids 2021. A reduced sanction of three months suspension applies to out of competition use, unrelated to sports performance, but if the athlete satisfactorily completes a “treatment programme” approved by DFSNZ, the sanction may be reduced to one month.
14. The scheme for more lenient sanction is plain. The otherwise mandatory provisional suspension “may be eliminated” under Rule 7.4.1(ii) if the athlete completes a treatment programme as specified. If not, the three months sanction will apply. The merits of an athlete promptly engaging the steps required in Rule 10.2.4.1 is obvious.
15. The Tribunal's view is that the proper course is to order, now, that the one month sanction will apply, conditional on the approved treatment programme being completed

to the satisfaction of DFSNZ. If DFSNZ is not so satisfied, the balance of three months suspension must be served.

16. The Tribunal considers that the steps available for an athlete to promptly engage in an approved treatment programme should be widely promulgated to athletes and sporting bodies and should be specifically notified to athletes who have returned positive tests as soon as possible after their positive test results are available to DFSNZ. While approval of any particular treatment programme is a matter for DFSNZ, the Tribunal notes that the programme for this athlete mentioned in this Decision seems well suited to meet the intent of the new Rules. The Tribunal commends the DFSNZ “Information for Athlete” and “Information for Medical Practitioner” documents, which it considers provide lucid guidance and should be invaluable to the athlete, his or her support, and the medical practitioner engaged. That information is annexed.

ORDERS

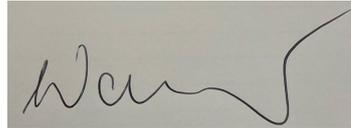
17. The Tribunal makes orders as follows:

- 1 Subject to Order 2 below, imposing a period of ineligibility of one month on the athlete under R. 10.2.4.1, commencing on 8 February 2022.
- 2 The one month period of ineligibility referred to in Order 1 above is conditional upon the athlete completing the treatment programme in which he is presently enrolled, to the satisfaction of DFSNZ. If DFSNZ determines, in its sole discretion, that the athlete has not satisfactorily completed the treatment programme, it must then give written notice of its determination to him, with a copy to the Tribunal. In the event such notice is given, the period of ineligibility now imposed on the athlete will be 3 months.
- 3 The athlete has been subject to a Provisional Suspension order since 8 February 2022, and he is entitled to have the time since then (2 months and 6 days to the date of this decision) credited against the ineligibility period or periods now ordered. The one month period imposed in Order 1 above having expired, he is free to return to competition immediately, subject to Order 2 above. In the event he fails to complete the treatment programme to the satisfaction of DFSNZ, he will serve the balance of the three month ineligibility period not served under the Provisional Suspension order (24 days), commencing on the day after DFSNZ’s notice given under Order 2 above.

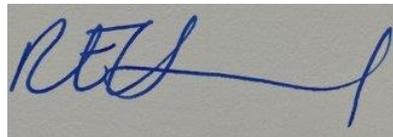
Dated: 14 April 2022

Nicholas Davidson

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The Hon. Nicholas Davidson QC
Deputy and Acting Chair



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Warwick Smith
Deputy Chair



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Pippa Hayward
Member



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INFORMATION FOR ATHLETE

Substance of Abuse information package

Where an anti-doping rule violation involves a *Substance of Abuse*, Article 10.2.4.1 of the Sports Anti-Doping Rules 2021 (**SADR 2021**) provides that:

“If the Athlete can establish that any ingestion or Use occurred Out-of-Competition and was unrelated to sport performance, then the period of Ineligibility shall be three (3) months Ineligibility.

In addition, the period of Ineligibility calculated under this Article 10.2.4.1 may be reduced to one (1) month if the Athlete or other Person satisfactorily completes a Substance of Abuse treatment programme approved by the Anti-Doping Organization with Results Management responsibility. The period of Ineligibility established in this Article 10.2.4.1 is not subject to any reduction based on any provision in Article 10.6.”

Possible entitlement to a reduced period of Ineligibility under Article 10.2.4.1

As your “A” sample shows the presence of a metabolite of a Substance of Abuse, if you establish that any ingestion or use occurred out-of-competition and was unrelated to sport performance, then the period of Ineligibility will be three (3) months, in accordance with Article 10.2.4.1 of the SADR 2021.

This period of Ineligibility may be reduced to one (1) month if you satisfactorily complete a Substance of Abuse treatment programme approved by Drug Free Sport New Zealand (DFSNZ).

We recommend that you take legal advice regarding this matter. Any period of ineligibility (including whether any reduction is applied) will be the decision of the Sports Tribunal of New Zealand, not DFSNZ.

Treatment Programme

If you are currently under treatment related to substances of abuse, you may provide evidence of this continuing treatment programme to DFSNZ for consideration.

Should you otherwise wish to engage in a substance of abuse treatment programme and apply for a period of Ineligibility of one (1) month under Article 10.2.4.1, DFSNZ recommends that you:

- attend an appointment with a qualified medical practitioner in relation to the substance of abuse;
- provide a completed statement of assessment to DFSNZ (template attached); and
- engage with and complete any treatment programme recommended by your medical practitioner.

Enclosed with this document is an information sheet that you may provide to your medical practitioner and a Statement of Assessment for your medical practitioner and yourself to complete. This must be procured at your own expense.

If you intend to apply for a period of Ineligibility of one (1) month under Article 10.2.4.1 please provide evidence of your current treatment programme or completed Statement of Assessment from your medical practitioner to intel@drugfreesport.org.nz

Education

In addition to the steps outlined above DFSNZ encourages you complete an online education which can be accessed [here](#). DFSNZ has a range of modules which offer information about anti-doping rules, medications, supplements, the doping control process and reporting doping. You can access the courses for free from anywhere in the world, and there is something suitable for you no matter your current level of knowledge or the level at which you play sport

Encl.

Information for Medical Practitioner
Statement of Assessment for completion by Medical Practitioner/Athlete



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INFORMATION FOR MEDICAL PRACTITIONER

Assessment following positive drug test for a Substance of Abuse under the Sports Anti-Doping Rules 2021

Drug Free Sport New Zealand (DFSNZ) is New Zealand's national anti-doping organisation with responsibility for implementing an effective anti-doping programme.

Background

On [date] the Athlete was subject to an in-competition doping control test. The Athlete's "A" sample returned an Adverse Analytical Finding for [substance].

Substance of Abuse

The substance [insert substance] is prohibited under the World Anti-Doping Code – International Standard – Prohibited List 2021 (Prohibited List). The Prohibited List identifies the substances and methods prohibited in - and out-of-competition in sports. The substance is categorised as a "Substance of Abuse". Substances of Abuse are categorised as such because they are frequently abused in society outside of the context of sport. The following substances are identified as Substances of Abuse in the Prohibited List:

- Cocaine (S.6a – Non-specified Stimulants);
- Methylenedioxymethamphetamine (MDMA / "ecstasy") (S.6b – Specified Stimulants);
- Diamorphine (Heroin) (S.7 – Narcotics); and
- Tetrahydrocannabinol (THC) (S.8 – Cannabinoids).

The presence of a prohibited substance or its metabolites or markers in an Athlete's sample is a violation of an anti-doping rule. The consequences of this violation can include a ban from participating in sport ("period of ineligibility").

Following an Adverse Analytical Finding for a Substance of Abuse, athletes may complete a treatment programme to apply to reduce their period of ineligibility to one (1) month.

An Athlete who wishes to apply to reduce their period of ineligibility to one (1) month may:

- attend an appointment with a qualified and registered medical practitioner to discuss the use of the substance of abuse;
- engage with and complete any treatment or treatment programme recommended by the medical practitioner; and
- provide a certificate of assessment, completed by the medical practitioner and counter-signed by the athlete, to DFSNZ.

Assessment of Athlete

Please complete the statement of assessment confirming that you have examined the Athlete and made any referral or treatment recommendations that you deem appropriate. A template setting out all information required for this statement is enclosed.

Please note that you should assess the Athlete as you would any patient seeking treatment related to the use of a substance of abuse. Any treatment recommendations, such as psychotherapy, education, counselling, and further assessment by a Psychiatrist or Addiction Medicine Specialist should be provided directly to the Athlete. DFSNZ does not seek the specifics of any treatment recommendations.

Additional information on Substances of Abuse can be found on the World Anti-Doping Agency's website via the following link: <https://www.wada-ama.org/en/news/wada-publishes-redesigned-more-athlete-friendly-2021-prohibited-list>

If you have any questions please contact Hayden Tapper, Investigations and Intelligence Manager, DFSNZ on 027 837 5814 or intel@drugfreesport.org.nz

Encl.

Statement of Assessment - for completion

Investigations and Intelligence Manager
Drug Free Sport New Zealand
Auckland

Email: intel@drugfreesport.org.nz

Date: _____

Confirmation of medical practitioner in relation to substance of abuse

Dear Drug Free Sport New Zealand,

I confirm that I have consulted with and medically assessed _____ in relation to the Adverse Analytical Finding for [insert substance] arising from a doping control test on [date].

I confirm I have provided _____ with any treatment recommendations or referrals that I have deemed necessary.

Signed:

Name:

Clinic details:

Phone number:

Date: _____

Confirmation of athlete in relation to substance of abuse

I confirm that I have consulted with and been medically assessed by _____ in relation to the Adverse Analytical Finding for [insert substance] arising from a doping control test on [date].

I confirm _____ has provided me with their medical recommendations, which may include a treatment programme or referral.

I confirm that I have engaged / am engaging (please circle) with the recommendations and will complete any further course of action recommended.

Signed:

Name: