

IN THE MATTER OF THE INTERNATIONAL MIXED MARTIAL ARTS  
FEDERATION ANTI DOPING PROCEEDINGS CONCERNING BREACH OF  
ARTICLE 2.1

BETWEEN:

THE INTERNATIONAL MIXED MARTIAL ARTS FEDERATION

--AND--

JAMIE HERRINGTON

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DECISION OF THE INDEPENDENT ANTI DOPING COMMITTEE

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**FACTUAL BACKGROUND**

1. This case concerns Ms. Jamie Herrington who was a competitor in the 145lb division at the International Mixed Martial Arts Federation's (IMMAF) World Championships in 2015.
2. This championship was a tournament and the athlete therefore had a series of fights. She subsequently won the gold medal in her division. Following this she was notified of, and submitted to, a post fight competition test by Drug Free Sport Inc. This is a recognised and certified testing agency based in the USA.
3. Both A and B specimens were collected with Specimen ID C004236121. These samples were transferred to the World Anti-Doping Agency accredited laboratory at University of California, UCLA Olympic Analytical Laboratory. The collection date for these samples was the 11<sup>th</sup> July 2015.
4. The analysis for the "A" Sample showed a positive result for amphetamine. IMMAF submit that this is a "prohibited" substance under S6 of WADA code and is therefore a breach of IMMAF's anti-doping rules.

5. The athlete was notified of the result on the 3<sup>rd</sup> September 2015 and was provisionally suspended on this date.
6. Ms. Herrington wrote to IMMAF on the 14<sup>th</sup> September 2015 submitting an official denial saying she had never taken any drug that included amphetamines and indicated she had taken Nyquil. This was not accepted by IMMAF.
7. There has not been any suggestion in a departure from WADA standards, the transfer of samples, and subsequent analysis of the “A” sample, which would affect the reliability of the result.
8. Ms. Herrington did not accept the analysis of the “A” finding and requested that the “B” sample be tested. The request form is dated October 13<sup>th</sup> 2015.
9. The “B” sample also presented a positive result for amphetamine and this was disclosed to Ms. Herrington on the 3<sup>rd</sup> November 2015.
10. On the 13<sup>th</sup> November 2015 Ms. Herrington responds to the second positive sample stating that she would deny the results as “unintentional use”.
11. On the 27<sup>th</sup> January 2016 Ms. Herrington wrote to IMMAF detailing her surprise at the results and reiterating her previous indication regarding Nyquil. She also attached websites supporting an argument of pseudoephedrine creating false positives for amphetamine.
12. On the same date there is correspondence between IMMAF and the testing laboratory. The crux of this correspondence is the specific assertion by the laboratory that, given the highly selective GCMS method to detect amphetamine, pseudoephedrine would not be mistaken for amphetamine.
13. Further correspondence from the athlete on the 13<sup>th</sup> April 2016 gives a chronology, created by Ms. Herrington, around the time of the world championships. In addition to Ms. Herrington’s assertions that she ingested Nyquil she also suggests the that the following occasions were when somebody could have possibly slipped something into her drink:
  - a. On July 9<sup>th</sup> 2015 a friend bought her a drink to congratulate her on her victory. She shared this one alcoholic beverage between 3 other friends.
  - b. On July 10<sup>th</sup> 2015 Ms. Herrington was at the pool with many other athletes between 11am and 5pm. That same evening Ms. Herrington was feeling unwell and took Nyquil Night Time to assist with her nausea.
14. Ms. Herrington’s most recent and pertinent correspondence is on the 20<sup>th</sup> April 2016 where she advances the following arguments in relation to the positive sample:
  - a. She believed Nyquil was the cause of failing the test
  - b. That someone may have spiked one of her drinks
    - i. She details someone may have “tainted” her “water while at the pool or working out” or;
    - ii. Her drink was spiked in the intervening day (Ms. Herrington states

that even at this point she did not “feel anything”)

15. As a competitor in the IMMAF the athlete was bound by the rules and regulations including the anti-doping rules.
16. No therapeutic use exemption (TUE) was applied for in respect of any substance.
17. At the hearing Ms. Herrington initially denied that amphetamine was found in her system. At the end of the hearing there was a reluctant acceptance that amphetamine was found in her samples. She states categorically she did not take anything to enhance her performance and can only say she was spiked or it was a false positive as there is no other explanation for how this entered her system.
18. At the hearing Ms Herrington also indicated she brought Nyquil Night Time with her from Canada.
19. Further investigation was made regarding the concentration of the amphetamine and it transpired the concentration was 2840ng per millilitre of urine.

## **RULES**

20. Article 1 indicates that:

*Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through Article 2.10 of these Anti-Doping Rules.*

21. IMMAF’s primary assertion is that this is a breach of Article 2.1 of their anti-doping rules:

*2.1.1 It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his/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.*

22. For there to be sufficient proof of a 2.1.1 contravention one must look at 2.1.2. Sufficient proof can be established for the purposes of 2.1.1:

*Where the Athlete’s B Sample is analysed and the analysis of the Athlete’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete’s A Sample;*

23. The burden and standard of proof are highlighted at Article 3.1 and details the following:

*IMMAF shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether IMMAF has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.*

24. 3.1 continues to say, in the event that the burden is placed on the athlete that

*Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.*

25. Article 3.2 indicates that facts related to anti-doping rule violations may be established by any reliable means, including admissions.

26. Article 4 highlights where the prohibited list is located and the incorporation of the WADA code. The current allegation is one of a finding of Amphetamine. This falls under S6 (a) (WADA code) Non Specified Stimulants.

## **RULES REGARDING SANCTIONS**

27. If it is found that a doping violation occurred the following rules deal with sanction. The relevant article for a non specified substance is 10.2.1 which states:

*The period of Ineligibility shall be four years where:*

*10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*

28. Ineligibility is classified in the rules as being barred from participating in any *Competition* or other activity or funding as provided in Article 10.12.1. This is competition authorised or organised by any *Signatory*, *Signatory's* member organisation, or a club or other member organisation of a *Signatory's* member organisation, or in *Competitions* authorised or organised by any professional league or any international or national level *Event* organisation or any elite or national-level sporting activity funded by a governmental agency.

29. 10.2.1.1 would not be applicable if the athlete can establish that the anti-doping rule violation was not intentional. "Intentional" for the purpose of these articles is defined at 10.2.3 as requiring that

*The Athlete or other Person engaged in conduct which he/she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.*

30. 10.2.3 continues to say

*An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.*

31. In addition to periods of ineligibility Article 9 creates an automatic disqualification of the result obtained in that *Competition* with all resulting *Consequences*, including forfeiture of any medals, points and prizes following an anti doping rule violation.

#### *NO FAULT OR NEGLIGENCE*

32. Article 10.4 states that if an athlete is able to show that they bear no fault or negligence then an applicable period ineligibility shall be eliminated. The guidance indicates that these will *only apply in exceptional circumstances, for example where an Athlete could prove that, despite all due care, he/she was sabotaged by a competitor.*

33. The guidance on this point is specific in the comment to 10.4 (c) and it is stated that the “no fault or negligence” would not apply when:

*(c) sabotage of the Athlete’s food or drink by a spouse, coach or other Person within the Athlete’s circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.5 based on No Significant Fault or Negligence.*

34. The definition is given in Appendix 1 for no fault or negligence as:

*The Athlete or other Person's establishing that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule.*

*Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his/her system.*

#### *NO SIGNIFICANT FAULT OR NEGLIGENCE*

35. Article 10.5 allows a reduction of a period of ineligibility based on no significant fault or negligence. The definitions in Appendix 1 give guidance on no significant fault or negligence as:

*The Athlete or other Person's establishing that his/her 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 anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his/her system.*

#### *OTHER REDUCTIONS*

36. Reductions for the following are also permissible:
- a. Substantial assistance in discovering or establishing anti-doping violations (Article 10.6.1)
  - b. Admission of an anti doping rule violation in the absence of other evidence (Article 10.6.2)
  - c. Prompt admission after being confronted with a violation sanctionable under 10.2.1 (Article 10.6.3)

#### **FINDINGS**

37. Ms Herrington detailed that she took Nyquil Night Time to assist her with her nausea and informs that Nyquil Night Time contains pseudoephedrine. I further note that under Article 3.2 I am permitted to accept admissions as a means of establishing facts of an anti-doping violation.
38. Pseudoephedrine is also a prohibited substance under S6 (b) of the WADA Prohibited List 2015. The guidance in the WADA code states pseudoephedrine is prohibited when its concentration in urine is greater than 150 micrograms per millilitre. No such concentration was found in the urinalysis.
39. Further investigations by IMMAF revealed that pseudoephedrine is not an ingredient in Nyquil Night Time in Canada. As this matter is not decisive in this case I make no finding on this point.
40. I find that Ms Herrington had not consumed anything which subsequently resulted in a prohibited concentration of pseudoephedrine in her system in competition. I

therefore conclude that there was no breach of 2.1.1 in respect of pseudoephedrine.

41. Ms Herrington's arguments in respect of the amphetamine are summarised as follows:
  - a. The pseudoephedrine created a false positive
  - b. That she may have ingested something without her knowledge
42. Dealing with the false positive assertion first. In response to the suggestion that there was a false positive for amphetamine created by pseudoephedrine IMMAF contacted the testing laboratory. IMMAF sought to establish whether a false positive could occur in the circumstances suggested by Ms Herrington. The laboratory states unequivocally that there would be no such confusion.
43. In addition the confirmed presence of the prohibited substance in the "B" sample shows there is sufficient proof of a doping violation (as per Article 2.1.2). I find the positive result of amphetamine to be reliable and that IMMAF have established an anti-doping rule violation to my comfortable satisfaction. I must therefore find that a violation of Article 2.1.1 has occurred.
44. Following a finding of violation of Article 2.1 one must consider sanctions and reductions. Under Article 10.2.1 a period of 4 years ineligibility must be imposed (prior to the consideration of any applicable reductions).
45. At the hearing Ms Herrington detailed the two relevant occasions where she may have been spiked. This is pertinent in establishing if there is a potential reduction in sanction.
46. On the 9<sup>th</sup> July 2015 Ms Herrington indicates that a friend bought her a drink and she shared it between 3 friends. The other friends were people who were there on separate vacations and were there to watch her compete. These were all people who would have no reason to sabotage Ms Herrington's competition. There was no suggestion of others being around on this occasion.
47. On the 10<sup>th</sup> July 2015 Ms Herrington indicated she obtained a number of water drinks from the bar throughout the day. She obtained these herself from the bartender. There were other athletes around on this occasion but Ms Herrington does not detail anything other than this.
48. At the hearing no reference was made by Ms Herrington as to the possibility of her water being spiked whilst she was exercising.
49. In addition Ms Herrington does not recall feeling different at any stage and indicated that it is unlikely she was spiked but it is the only explanation she has.
50. I do not accept that she was spiked with any amphetamines without her knowledge at any stage suggested. By her own admission she states it was

unlikely she was spiked but caveats this with it being the only possible explanation for amphetamine's presence.

51. I therefore do not accept that Ms Herrington used or was administered amphetamine without knowing or suspecting, and could not reasonably have known or suspected, even with the exercise of utmost caution.
52. I do not find any sabotage, or anything equally exceptional, occurred in this case. In light of this I cannot reduce the sanction under a finding of no fault or negligence.
53. Taken at its highest I find that Ms Herrington cannot establish, on balance of probabilities, how the substance entered her system. In light of this, and considering my findings in respect of no fault or negligence, I am unable to make any reductions, not only for no fault or negligence, but also for no significant fault or negligence.
54. There is also further comment in Article 10.2.1.1 regarding non-specified substances and consideration of intention. There is no suggestion that the athlete used this prohibited substance outside competition and in a context unrelated to sport performance and she categorically denies knowingly taking amphetamine. I also find that no TUE was applied for or granted in respect of Ms Herrington for the World Championships 2015.
55. I cannot accept the athlete's suggestion that she had been spiked. The athlete has not established any fault based reductions or any special assessment for the substances prohibited in competition only. In light of Article 10.2.1.1, the definition in the rules in 10.2.3, and my other findings I therefore cannot accept that the use was unintentional.
56. I have considered a reduction for "prompt admission" as per Article 10.6.3 but find I cannot reduce the sanction under this rule. Ms Herrington did not accept the finding in the "A" Sample and as a consequence the "B" sample was tested. Moreover even on the 20<sup>th</sup> April 2016 there is correspondence from the athlete indicating that she believed Nyquil was the cause of failing the test. In addition Ms Herrington proceeded with a contested hearing and did not accept that amphetamine was found in her samples at the beginning of the hearing. It was only at the end of the hearing where there was a reluctant acceptance of the presence of amphetamine. In light of all these circumstances she cannot be entitled to credit for prompt admission.
57. I also find that other reductions for substantial assistance and admission in the absence of other evidence are not applicable in this case.

## **DECISION**

58. As I find there are no applicable reductions in this case, the period of ineligibility is one of 4 years with that period commencing on the date of provisional suspension, namely 3<sup>rd</sup> September 2015.
59. In addition to the period of ineligibility, and as a consequence of my findings, Ms Herrington's results will be disqualified in the IMMAF World Championships 2015 with all resulting consequences. In this instance this will result in forfeiture of Ms Herrington's gold medal, disqualification of her results, and subsequent revision of medals in that category.
60. The athlete has a right to appeal to the Court of Arbitration for Sport within 21 days of this decision.
61. No orders for costs was sought or made.

2<sup>nd</sup> September 2016

Max Shephard