



DECISION of the FEI TRIBUNAL

dated 4 June 2024

In the matter of

FÉDÉRATION EQUESTRE INTERNATIONALE (the "FEI")

vs.

Mr Agusti Juan ELIAS LARA – Athlete (the "Athlete" or the "PR")

together the "Parties"

(Reference No. FEI Tribunal: C23-0054)
(FEI Case number: 2022/HD03)

I. Composition of the FEI Tribunal Hearing Panel:

Ms Diane Pitts (USA), Panel Chair.

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

Statutes 24th edition, effective 17 November 2021 (the "Statutes").

General Regulations 24th edition, effective 1 January 2023 (the "GRs").

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (the "IRs").

FEI Anti-Doping Rules For Human Athletes, effective 1 January 2021 (the "ADRHAs").

The World Anti-Doping Code - International Standard – Prohibited List – January 2022 (the “Prohibited List”).

III. Parties.

1. The FEI is the IOC-recognised international governing body for the equestrian sport disciplines of Dressage and Para-Equestrian Dressage, Jumping, Eventing, Driving and Para-Driving, Endurance and Vaulting.
2. Mr Agusti Juan ELIAS LARA (FEI ID 10032759) is an athlete registered with the National Equestrian Federation of Spain (the “ESP-NF”) in the discipline of dressage. The Athlete has been registered with the FEI since 2006 and has extensive experience having participated in approximately 106 FEI competitions since his first registration. The Athlete competed with the horse ALTANEIRO (FEI ID 104UJ67) at the CDIO5*-NC in Compiègne (FRA) from 19 - 22 May 2022 (“Event 1”) and at the CDI4* in Fritzens-Schindlhof (AUT) from 8– 10 July 2022 (“Event 2”).
3. As a member of the ESP-NF, which is a member of the FEI, the Athlete was bound by the ADRHAs.

IV. Procedural Background:

4. The first urine sample was taken from the Athlete during Event 1 on 21 May 2022 for testing under the ADRHAs. The sample was divided into an A Sample and B Sample and sent to a World Anti-Doping Agency (“WADA”)-accredited laboratory, Laboratoire Anti-Dopage Française, Chatenay-Malabry Hauts-de-Seine, France (the “Laboratory”), for analysis. The Athlete's samples were given reference number 7100547 (collectively, the “Sample 1”).
5. The second urine sample was taken from the Athlete during Event 2 on 8 July 2022 for testing under the ADRHAs. The sample was also divided into an A Sample and a B Sample and sent to the Laboratory for analysis. The Athlete's samples were given reference number 7026841 (collectively, the “Sample 2”).
6. The Laboratory analysed the Athlete’s A Sample 1 and reported an Atypical Analytical Finding (an “ATF”) for Clenbuterol (with the estimated concentration levels of 1.5 ng/mL). The Laboratory analysed the Athlete’s A Sample 2 and reported an ATF for Clenbuterol (with the estimated concentration levels of 0.04 ng/mL). Clenbuterol is included in the class S1.2 Other Anabolic Agents according to the 2022 Prohibited List. Clenbuterol is a Non-Specified Prohibited Substance and is prohibited at all times (In and Out-of-Competition).

7. The FEI confirmed that:
- (i) According to the FEI's and ESP NADO's records, the Athlete did not have a TUE to justify the Presence of Clenbuterol in his system; and;
 - (ii) There was no apparent departure from the International Standard for Testing and Investigations or from the International Standard for Laboratories that could reasonably have caused the finding of Clenbuterol in the Athlete's Sample.
8. Consequently, the FEI notified the Athlete through the Notification Letter dated 22 August 2022 (the "Notification Letter 1") stating, amongst others, that:
- (i) The Athlete's Samples collected at Event 1 and Event 2 revealed a presence of Clenbuterol;
 - (ii) The presence of Clenbuterol in the urine sample at an estimated concentration at or below 5 ng/mL is reported by the Laboratory as an ATF and required further investigation;
 - (iii) Clenbuterol may be used in certain countries as growth promoters for livestock and therefore may be associated with findings resulting from the consumption of contaminated meat;
 - (iv) As noted, the FEI stated that further investigations were required to determine whether any evidence existed to establish that meat contamination was more likely than not the source of the ATF. If such evidence existed, the FEI explained they would not have taken any further action in respect of the ATF. If such evidence did not exist, the FEI would have to pursue the finding as an Adverse Analytical Finding (the "AAF") and the normal Results Management process would apply;
 - (v) The FEI invited the Athlete to provide certain information related to his travels, dietary habits and the possibility of meat contamination being the source of the positive findings.
9. On 29 August 2022, the Athlete responded to the FEI providing details of his dietary intake and recent travel itinerary (prior to the positive finding of Clenbuterol)¹.
10. On 1 September 2022, the FEI sent a Notification Letter to the Athlete (the "Notification Letter 2") stating, amongst others, that:
- (i) Given the information and evidence provided by the Athlete, it seemed improbable that the ingestion of meat contaminated with Clenbuterol within the

¹ A summary of these submissions is noted at paragraph 21 to 23 of this Decision.

European Union would be the source of the positive findings in the Athlete's Samples;

- (ii) As a result, the FEI decided to pursue the ATF findings as AAFs, and the normal Results Management process was applied. The FEI informed the Athlete that he had a right to provide an explanation in regard to the alleged anti-doping rule violation(s) (the "ADRV") within 20 days as of the date of Notification Letter 2;
- (iii) In accordance with Article 7.4.1 of the ADRHAs, the FEI provisionally suspended the Athlete as of the date of Notification Letter 2 given that the Prohibited Substance detected in the Athlete's Samples was a Non-Specified Substance;
- (iv) Furthermore, in Notification Letter 2, the Athlete was informed that he had the right to request the analysis of the B Samples within 10 days of the date of that Notification Letter.

11. The Athlete did not request the B Samples analyses.

12. By Notice of Charge (the "Notice of Charge") dated 31 January 2023, the FEI notified the Athlete that he was charged with a violation of Article 2.1 of ADRHAs, Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.

13. On 28 November 2023, the FEI submitted the case to the FEI Tribunal (the "Tribunal") and requested that a hearing panel be appointed to adjudicate the case. The FEI also submitted its Response with the relevant exhibits and annexes.

14. On 13 December 2023, the Tribunal informed the Parties of the appointment of a one-person hearing panel (the "Panel"). The Parties were invited to submit any objections to the constitution of the Panel by 18 December 2023. The Athlete was also given until 3 January 2024 to reply to the FEI's submission. Finally, the Parties were granted a deadline until 8 January 2024 to indicate whether they requested a hearing.

15. On 14 December 2023 and 18 December 2023, the FEI and the Athlete, respectively, informed the Tribunal that they did not have any objections to the constitution of the Panel. In addition to the acceptance of the Panel, the Athlete also requested an additional extension of fourteen (14) days until 17 January 2024 to submit his submissions concerning the case, which the Panel granted.

16. On 17 January 2024, the Athlete provided his Reply (including written submissions and exhibits) to the Panel. The Athlete also requested a hearing before the Tribunal.

17. On 25 January 2024, the Panel wrote to all Parties and confirmed, in accordance with Article 25.1 of the IRs, that a hearing would be held in this matter. The Parties were requested to indicate several dates on which they would be available for a hearing and

details of the witnesses to be summoned.

18. On 9 February 2024 after liaising with the Parties on logistical arrangements for a hearing, the Panel confirmed that a hearing would take place on 11 March 2024 at 14:30 (GMT) by videoconference.

19. On 4 March 2024, the Panel provided the Parties with a provisional hearing schedule.

20. On 11 March 2024, the hearing took place.

V. The Submissions by and on behalf of the Parties²

i. The Submissions of the Athlete:

21. The Athlete submitted that he had never taken any kind of Prohibited Substance both in and out of competition or medication that may have contained Clenbuterol. He also noted that he had a clean disciplinary record and was well-recognised for his experience, skill, and care for horses.

22. The Athlete also provided details of his usual diet and his travel itinerary prior to the positive testing for Clenbuterol.

23. The Athlete submitted information about the supplements he was taking around the time of the AAF: Solaray L-Carnitine 500 mg, Cafeina Concept and Solaray Maca, stating that none of which appeared to contain the Prohibited Substance Clenbuterol.

24. The Athlete stated that after he consulted with his veterinarian, he discovered that a horse of his called "SILVIO" was administered a substance containing Clenbuterol and that he was advised to contact a Doctor- a Judicial Expert (the "Judicial Expert") to determine if this was the possible cause of the positive finding.

25. The Judicial Expert produced a report (the "Expert Report") on 19 September 2022 which suggested that the positive finding for Clenbuterol was caused by the medication administered to the Athlete's horse. The Judicial Expert considered various routes of entry of the horse's medication into the Athlete's body: the inhalation route, the dermal route, the digestive route and the parenteral route. After such

² The following section contains a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and oral testimonies submitted by them and their respective witnesses and experts throughout the proceedings. Although the Panel has fully considered all the facts, allegations, legal arguments and evidence presented in these proceedings, the Panel will only refer to the submissions and evidence it considers necessary to explain its reasoning in this decision.

considerations, the Judicial Expert concluded that involuntary inhalation of micro particles of Spasmobronchal granules of Spasmobronchal while handling the medication accounted for the detected Clenbuterol.

26. In addition to the Expert Report, the Athlete also submitted a certificate from his veterinarian and the leaflet from the Spasmobronchal medication.
27. The Athlete informed the FEI that he administered the Spasmobronchal medication to the horse during the first treatment (10-20 May 2022) from 10 May 2022 until 17 May 2022 and during the second treatment (19-29 June 2022) from 27-29 June 2022.
28. Following a change in his legal representation, the Athlete provided additional submissions in response to the Notice of Charge wherein he maintained and reaffirmed his position that Clenbuterol entered his system when he administered the Spasmobronchal medication to his horse.
29. The Athlete stated that he only realised this medication contained Clenbuterol after he was notified about the positive findings in the Sample.
30. The Athlete also asserted that his veterinarian did not warn him that Spasmobronchal medication contained Clenbuterol when he prescribed this medication to his horse.
31. The Athlete submitted that he did not wear any protective equipment, such as gloves, glasses or a mask while treating his horse with the Spasmobronchal medication (contrary to a statement in the Judicial Expert Report that *"he never used goggles or a protective mask, but always used latex gloves during the administration of this or any other treatment to the horses"*). The Athlete stated that he did not know why the Judicial Expert assumed he used latex gloves when administering treatment to his horses.
32. The Athlete explained that he handled the Spasmobronchal medication with his bare hands because the little spoon provided with the package got lost easily and that he mixed the Spasmobronchal medication into his horse's food by hand as the horse took it better when mixed with food.
33. The Athlete alleged that while treating his horse, he must have unknowingly touched his face or mouth with his hands thereby contaminating his system with Clenbuterol. He recalled that it was hot weather at that time of year, and it would have been normal to wipe away any sweat near his face with his hand.
34. The Athlete reiterated that he did not ingest Clenbuterol intentionally and he would have taken the necessary safety precautions if he knew of the risk involved.

35. The Athlete stated that the timeline of the Athlete's administration of the Spasmobronchal medication aligned with the laboratory evidence regarding the levels of urine.
36. Finally, the Athlete provided an opinion letter from Dr Emmanuel Strahm ("the Strahm Report") who was hired by the Athlete *"to address the possibility of Clenbuterol external contamination of the Athlete's urine by manual processing of Spasmobronchal administered to his horse"*. In his opinion letter, Dr Strahm concluded that *"if the question is to know whether the presence of clenbuterol in the athlete's urine could be explained by an external contamination by manual processing of Spasmobronchal, I would say yes, it could. And therefore, the explanation given by the athlete is acceptable"*.
37. The Strahm Report pointed out that the Clenbuterol determinations provided by the Laboratory are purely qualitative. Therefore, the Athlete submitted that the presence of Clenbuterol in his urine could be from external contamination via the manual administration of Spasmobronchal, which was a scientifically acceptable explanation.
38. In respect of the relief sought, the Athlete asked the Panel to reconsider the severity of the sanctions proposed by the FEI as the evidence presented by the Athlete demonstrated that he acted in good faith and had no intention to commit an ADRV.
39. He also pointed out that he had clearly demonstrated the circumstances by which Clenbuterol entered his system with no intention to enhance his performance in the competition but rather to do everything necessary for his horse's welfare.
40. The Athlete pointed out that he has been provisionally suspended for almost 9 months and should the Panel decide to impose a sanction, he suggested that it should be no greater than twelve months. However, the Athlete believed that he had furnished enough evidence to demonstrate that he bore no significant fault and no significant negligence for the rule violation, and that any sanction imposed should be reduced by one-half.
41. During the oral proceedings, the Athlete also clarified that he did not alter his position in this case when he changed legal representation during the proceedings. He stated that he was not entirely aware what was happening in this case before the file was transferred to new legal representation and that the expert study from the Judicial Expert and the wrongful assumptions contained therein were not authorised by the Athlete, and consequently there should be no concerns as to good faith or credibility of the Athlete actions. The Athlete claimed that he had always demonstrated good faith through full cooperation and transparency with the FEI.

42. Regarding the cross-contamination aspect of the case, the Athlete clarified that it arose from not wearing protective gear when administering the product to the horse i.e., that skin, mouth, and eyes absorption was the most likely route of cross-contamination.
43. Responding to questions about the Spasmobronchal administered to his horse, the Athlete stated that his veterinarian never warned him about the risks associated with this product nor did the product include any warning about the risks of administering the medication. The Athlete explained that he measured the dose in a spoon of 10 mg (2 x 10mg) and mixed it with the food using his hands and that no one else was present when he did this. He also recalled that it was hot weather, and he would wipe his face with his hands and did not wash his hands after mixing the drug with the horse's food.
44. In response to questions concerning his personal supplements, Solaray L-Carnitine 500 mg, Cafeina Concept and Solaray Maca, the Athlete confirmed that he took these to give him energy, strength and maintain well-being. He also confirmed he never checked if any of those supplements contained the Prohibited Substance Clenbuterol and that he was not aware that such supplementary substances may have contained substances that were not disclosed on the label. The Athlete also confirmed when questioned by the FEI at hearing that he did not know which route the Clenbuterol may have entered his system.

a) Athletes' expert witness - Dr Emmanuel Strahm ("ES").

45. ES introduced himself as the Independent Scientific Expert appointed by the Athlete from the University of Geneva, Switzerland, specialising in clinical pharmacology. ES stated that his opinion was based on the documents provided from this case to date (Expert opinions, test reports, laboratory documentation package, explanation from the laboratory about the outcomes, summary of product features for Spasmobronchal containing clenbuterol).
46. ES stated that his duty was to review the case and the expert report written by Professor Buclin in order to determine whether the Clenbuterol retrieved from the Athlete's urine could have been caused by cross-contamination from the Spasmobronchal used to treat a horse. ES addressed three different topics in order to clarify issues in these proceedings:
- (i) That whilst he fully agreed with the calculations provided by Professor Buclin's report, he did not agree with the Clenbuterol concentration calculations obtained by the Laboratory. He stated that the Laboratory warned the FEI that the results

were for information purposes only (which were qualitative and not quantitative measurements i.e., "[...] *the laboratory has applied a method that was developed for qualitative purposes and, other than having established that the mentioned substance is present in the sample at a concentration above the method's limit of detection, assignment of the absolute concentration of the analyte in the sample falls outside the intended purpose. Taking these qualifications into account, an indicative estimation of the concentration is provided for information purposes only. [...] The indicative estimates for the concentration of the mentioned substance in the sample obtained in this manner is approximately 1.5 ng/ml (letter from 20 June 2022 for sample 7100547A) / 0.04 ng/ml (letter from 17 August 2022, sample 7026841A);*");

- (ii) That the Report provided by Professor Buclin had many deficiencies as its conclusions are derived from very scarce, unreliable and limited scientific literature and data of Clenbuterol in urine. ES noted that the reasoning presented in the Professor Buclin's report was derived from the articles of Yamamoto et al., Zimmer & Bucheler and Yang et al (1985) and this study did not provide acceptable Clenbuterol concentrations and clinical data on which to base the calculations in this case and was overinterpreted;
- (iii) That the question was whether the presence/traces of Clenbuterol in the Athlete's urine could be explained by external contamination by manually processing Spasmobronchal without protective clothing and that such contamination was possible, therefore the Athlete's explanation was plausible.

47. During the closing submissions, the Athlete's Legal Counsel reiterated that the Athlete was a dedicated equestrian who has given his whole life to the love and the enjoyment of horses without any disciplinary issues with the FEI prior to this case. In addition, the Athlete would not gain any performance enhancing effect from taking Clenbuterol particularly as he was a dressage rider, therefore any motivation to take a Prohibited Substance was absent. He also focused his closing submissions on the two-pronged elements in an ADRV namely intent and fault.

48. In respect to intent, he noted that there was a plausible explanation for the AAF. In addition, he noted that the packaging of the drug provided no instructions with respect to safety. In the Spanish version (contradictory instructions existed depending on the country it is sold in) it stated to avoid contact with the skin but there were no instructions that contact should be avoided for anything other than discomfort. He submitted that their biggest concern related to the science on which this case was examined, and this scientific data was problematic in establishing a plausible connection between how the Athlete encountered the Clenbuterol and the effect of this on the Laboratory tests. He submitted that the science on which the FEI had based its position was full of speculation, imprecision and conclusions that were

unsupported by science.

49. He also referred to the submissions of ES and how these highlighted that a plausible scientific basis existed for the conduct of the Athlete to return the findings of the doping test. He also stated that the scientific basis for the strong definitive conclusions submitted were full of methodological ambiguity.
50. Finally, the Athlete's Legal Counsel requested that the Athlete's suspension be lifted immediately as no legal basis existed to uphold this sanction or alternatively, that the maximum sanction should be a period of 2 years.

ii. The Submissions of the FEI:

51. The FEI submitted that the Athlete violated Article 2.1 of the ADRHA and referred to Article 3.1 of the ADRHAs, pursuant to which it was the FEI's burden to establish that an ADRV occurred to the comfortable satisfaction of the Panel bearing in mind the seriousness of the violations alleged.
52. Furthermore, the FEI noted that the elements of an Article 2.1 violation were straightforward: it was a 'Strict Liability' offence, established simply by evidence that a Prohibited Substance was present in the Athlete's Sample.
53. Consequently, the FEI submitted that the analyses of the A Samples taken from the Athlete at Event 1 and Event 2 confirm the presence of Clenbuterol and constituted sufficient proof that the Athlete violated Article 2.1 of the ADRHAs.
54. Additionally, the FEI noted that the Athlete did not challenge the AAFs at any point during these proceedings. In conclusion, the FEI submitted that it had discharged its burden of establishing that the Athlete violated Article 2.1 of the ADRHAs.
55. The FEI submitted that Article 10.2.1 of the ADRHAs provided that an athlete with no previous doping offences who violated Article 2.1 of the ADRHAs through the presence of a Non-Specified Substance was subject to a period of ineligibility of four (4) years unless the Athlete could establish that the ADRV was not intentional (in which case the Ineligibility period shall be two years in accordance with Article 10.2.2 of the ADRHAs).
56. Furthermore, the FEI noted that the ADRHAs provide that once the Athlete proved the non-intentional character of his or her violation, his/her sanction may be further reduced or eliminated if he/she is able to establish No Fault or Negligence (Article 10.5 of the ADRHA) or No Significant Fault or Negligence (Article 10.6.2 of the ADRHAs). Moreover, in order to do this, the rules specified that the Athlete must establish to the

satisfaction of the FEI Tribunal on the balance of probability³:

- I. How the Prohibited Substances (here, Clenbuterol) entered his/her system; and
- II. That he/she bears No Fault or Negligence for that occurrence; or
- III. That he/she bears No Significant Fault or Negligence for that occurrence, bearing in mind the definition of No Fault or Negligence.

57. In respect of the 'threshold' requirement: proving how Clenbuterol entered the Athlete's system, the FEI referred to the comment to Article 10.2.1.1 of the ADRHAs that provided that while it is theoretically possible for an athlete or other person to establish that the ADRV was not intentional without showing how the Prohibited Substance entered one's system, it was highly unlikely that in a case of this nature pursuant to Article 2.1 of ADRHAs that an athlete would be successful in proving that they acted unintentionally without establishing the source of the Prohibited Substance.

58. The FEI also noted that pursuant to the jurisprudence of the Tribunal and the Court of Arbitration of Sport (the "CAS") and as stipulated by the ADRHAs, that it was very clear that a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence is that the athlete proves how the Prohibited Substance(s) entered into his/her system.⁴

59. The latter requirement must be strictly applied because without such proof it would be impossible to assess the Athlete's degree of Fault or Negligence for the presence of the Prohibited Substances in his/her body.

60. The FEI noted that the Athlete alleged that Clenbuterol must have entered his system while administering the Spasmobronchal medication to his horse. In this respect, the FEI noted:

³ Article 3.1 ADRHAs

⁴ See for example: La Barbera v IWAS, CAS 2010/A/2277, award dated 2 May 2011, para 4.26; IAAF v ANI, Aswini el al, CAS 2012/A/2763, award dated 30 November 2012, para 9.2 ('In order for the Athletes to be able to argue that exceptional circumstances apply in their case, they must first... satisfy the threshold test of establishing how the prohibited substance(s) entered their systems'); WADA v FCL & Villareal, CAS 2011/A/2336, award dated 2 March 2012, para 95 ('demonstrating the route of ingestion is one of the requirements pursuant to article 10.5 IWF ADP. Without such demonstration no reduction or elimination of the sanction is possible irrespective of any other factual circumstances'); FINA & WADA v Tagliaferri, CAS 2008/A/1471 & CAS 2008/A/1486, award dated 5 February 2009, para-9.5.2 (establishing 'how, and because of what surrounding circumstances, the drug came to be present in the athlete's body, 'is a prerequisite for being able to apply the mitigating grounds' of Art 10.5); IRB v Keyter, CAS 2006/A/1067, award dated 13 October 2006, para 6.8 ('To establish exceptional circumstances the Respondent must prove: (a) how the prohibited substance came to be present in his body, and (b) that he did not know or suspect, and could not have reasonably known or suspected even with the exercise of utmost caution, that he had used or been administered the prohibited substance'); Puerta v ITF, CAS 2006/A/1025, award dated 12 July 2006, para 11.2.5 (to rely on Art 10.5, the athlete 'must first establish how the Prohibited Substance entered his body).

- I. The Judicial Expert Report considered various routes of entry of the horse's medication into the Athlete's body: the inhalation route, the dermal route, the digestive route and the parenteral route. The Judicial Expert concluded that the involuntary inhalation of microparticles of granules of Spasmobronchal while handling the medication would account for the detected Clenbuterol.
- II. Dr Emmanuel Strahm's opinion letter draws conclusions without referring to any scientific studies or explaining in anyway how he came to the conclusions in his opinion letter.
- III. That the latest submissions from the Athlete's Legal Counsel claimed the possibility of cross-contamination through contact with skin, mouth or eyes since the Athlete claims he did not wear any protective gear and would have "naturally put his hand near his head and face to wipe away sweat in hot and humid stable conditions". The FEI stated that the latter submissions did not refer to any scientific data to support the alleged cross-contamination scenarios; with the only supporting document being the opinion letter from Dr Emmanuel Strahm.

61. The FEI also points out the clear discrepancy in the information provided to the FEI regarding the Athlete's use of protective gear during the preparation of the medication i.e., in the Judicial Expert Report, the Judicial Expert states that the Athlete "*never used goggles or a protective mask, but always uses latex gloves during the administration of this or any other treatment to the horses*", whereas in the latest submissions the Athlete stated that he did not wear any protective gear, such as gloves, glasses or a mask while treating his horse with the Spasmobronchal medication and that he was unaware of how the Judicial Expert reached the conclusion that he always used latex gloves.

62. In order to verify the scientific plausibility of the various explanations provided by the Athlete, the FEI requested an Expert Opinion from Professors Thierry Buclin ("TB"⁵ and Jérôme Biollaz⁶ from the Centre Hospitalier Universitaire Vaudois/ Lausanne University

⁵ Professor Buclin is a specialist in clinical development and therapeutic drug monitoring and was appointed professor at the Faculty of Biology and Medicine of the University of Lausanne (UNIL) and chief of the Division of Clinical Pharmacology at the CHUV on August 1, 2011. He is also a lecturer and researcher at UNIL since 1998 and privat-docent since 2004, he participated in the training of medical students and provides specialized courses in pharmacokinetic and pharmacodynamic modelling of drugs. He also lectures to postgraduates and for the continuing education of various health care professionals. Sensitive to the societal benefits of pharmacotherapy, he is regularly called as an expert by the media or by the courts.

⁶ Professor Biollaz is an Honorary Professor at the UNIL and a former chief of the Division of Clinical Pharmacology at the CHUV (from 1996 to 2009). Beyond research aimed at validating new drugs (phase I studies), Jérôme Biollaz is also interested in more fundamental questions concerning the mechanisms of action of drugs, their possible interactions, cost (risk) / profit (utility), etc. In this sense, he has always been attentive to developing bridges between fundamental pharmacology and clinical pharmacology, and to developing the methods of analysis necessary for research in clinical pharmacokinetics and to developing new means of exploring the action of drugs on the kidney. The FEI also noted that Professor Biollaz had been heavily involved in pre and postgraduate teaching both at the Faculty of Medicine and at the School of Pharmacy. He has

Hospital (CHUV) in Lausanne, Switzerland; both experts in pharmacology and toxicology.

63. The FEI stated that the Expert Opinion from Professors Buclin and Biollaz (the "CHUV Expert Opinion") was totally independent and based on the documents of the case file, as well as on the available scientific literature and on their experience in clinical pharmacokinetics.
64. The CHUV Expert Opinion evaluated the first scenario provided by the Athlete concerning the source of the Clenbuterol findings in the Athlete's Samples - the inhalation route. The CHUV Expert Opinion observed that Spasmobronchal (Clenbuterol HCL) was administered as granules containing 14 micrograms of Clenbuterol per gram. The size of the dust particles potentially contaminated with Clenbuterol does not seem conducive to result in deep pulmonary inhalation. Particles larger than 10 μm are mainly deposited in the nose and oropharynx. Those smaller than 0.5 μm can be inhaled but would subsequently be exhaled without being deposited in the lungs. Clenbuterol's molecule is expected to have a very low volatility and only insignificant quantities could dissolve in the air when in contact with solid form and be carried in gaseous form. Consequently, the CHUV report confirmed that Aerial exposure of contaminated dust was the only route possible to lead to inhalation, deposition along the pharynx and airways and subsequent digestive absorption.
65. Following the review of the available scientific data, Professors Buclin and Biollaz found that the back extrapolation of the amount of Clenbuterol excreted over a 24-hour period on 8 July 2022⁷ (date of Sample 2 collection) suggested an ingestion corresponding to 20-40 μg of Clenbuterol, when compared to the excretions measured in the subjects studied by Yamamoto (0.35 to 0.65 and 0.9 to 1.1 for a dose of 20 and 40 μg respectively). Consequently, since the volume of urination can vary markedly over time (a range of 100 to 600 ml, i.e., a ratio of 1 to 6, is possible), it could be argued that the method used above for determining the amount of Clenbuterol excreted over 24-hour period was not suitable. By extrapolation, urine concentration measured on 21 May 2022 (1.5 ng/ml) could give an excreted amount ranging from 150 to 900 ng. However, with 5 to 10 urinations over 24 hours, the calculated amount excreted was very similar, except for low urinary volumes, which cannot be considered reasonable given the measured specific gravity of the analysed sample.
66. Using the same approach as above, the Clenbuterol urine concentration detected on 8 July 2022 would be compatible with a last exposure of around 20-40 μg of

supervised numerous theses by doctors, pharmacists and biologists. He sat for many years on the Federal Medicines Commission and was also a member of the CHUV Clinical Research Ethics Commission.

⁷ Table II of the CHUV Expert Report – range: 0.38-0.76 $\mu\text{g}/24\text{h}$ according to the urine volume.

Clenbuterol on 29 June 2022, which was the order of a therapeutic dose for humans. (A more recent intake of a smaller dose would be theoretically possible, but this was not consistent with the Athlete's chronological recollection regarding his exposure to the drug).

67. It was also put forward that since the Spasmobronchal granules contain 14 micrograms of Clenbuterol per gram, one must conclude that for inhaling/ingesting 20 to 40 µg of Clenbuterol, the Athlete should have inhaled/ingested a contaminated dust containing between 7% to 14% of the dose administered to the horse (280 µg/24 hr), amounting to 1.5 to 3 grams of granules dust. The latter would require a person to be working in an incredibly dusty atmosphere for many hours to reach such a level which seemed inconsistent with the time it took for a drug administered twice daily for horse care as well as with the air quality encountered during "horse farming".
68. The FEI submitted that the CHUV Expert Opinion concluded that despite the imprecision linked to the limits of the measurement method (as mentioned by the Laboratory) as well as to the approach by extrapolation in return of the inhaled/ingested dose from urinary excretion, the hypothesis of accidental airborne contamination during preparation and administration of the Spasmobronchal medication to the horse was highly improbable.
69. The FEI informed the Athlete about the conclusions of the CHUV Expert Opinion, and Following a change in the Athlete's legal representation, the Athlete disavowed the Judicial Expert Opinion and alternatively claimed that the presence of Clenbuterol in the Samples was due to cross-contamination by the Spasmobronchal medication through contact with his skin, mouth or eyes and that he failed to wear any protective gear while administering the Spasmobronchial.
70. Following the supplemental submissions by the Athlete, the FEI reverted to Professors Buclin and Biollaz who provided the FEI with a response to the Athlete's objections and claims. They firstly dealt with the allegations that the CHUV Expert Opinion used qualitative estimations of Clenbuterol concentration in the Samples as quantitative and therefore the conclusions of the CHUV Expert Opinion were wrong. In this respect, it was pointed out that the Laboratory mentioned that the assay method was developed for "semiquantitative purposes".⁸ This meant that the order of magnitude of the result was correct, even if high precision was not guaranteed. The CHUV Expert Opinion considered the significant margin of uncertainty of the measurement in the

⁸The Laboratory mentions in this respect that: "The concentration of the mentioned substance was obtained by comparison of the response of the sample with the response of a positive quality control sample for the same mentioned substance or an internal standard analysed in the same sample batch." See the two correspondences from the Laboratory regarding the detected levels of Clenbuterol in the positive Samples, EXHIBIT 17.

interpretation, however, the order of magnitude must be considered as realistic. Thus, invalidating this approach would require explaining the presence of Clenbuterol 4 days after the last exposure by another route than the inhalation initially invoked by the Athlete, or by a later exposure not consistent with the Athlete's statements.

71. Subsequently, the issue of cross-contamination through skin or eyes as well as ingestion of some particles of medication through mouth was addressed. Professors Buclin and Biollaz noted that for a positive test to be returned four days after the last ocular exposure via cross-contamination would be improbable according to the characteristics of the drug and its galenic presentation.
72. Regarding ingestion of some particles of the medication by the Athlete it was pointed out that the ingestion of at least 1-2 grams of granules per day, i.e., a teaspoon or so, by the mouth during the periods considered would be necessary to explain the urinary concentrations measured, taking into account the time delay indicated by the statements of the Athlete. The oral absorption of a smaller dose, but closer to the urine sampling might be an alternative explanation, but not consistent with the statements of the Athlete.
73. Regarding contamination through the skin, the physicochemical profile of the product might theoretically allow a transcutaneous passage with accumulation in the subcutaneous fatty tissue and gradual release into the circulation. Professors Buclin and Biollaz asked the opinion of a colleague involved in occupational medicine who stated that according to usual assumptions employed for such simulations, the small amounts of powder transiently sticking to the hands after normal product manipulation contained limited amount of Clenbuterol, which was insufficient to lead to a worrying level exposure over a short duration. Moreover, a continuous rubbing of hands over one hour or more would be necessary to lead to the systemic absorption of significant amounts of the active ingredient, to explain the systemic exposure observed and seemed unlikely.
74. Finally, Professors Buclin and Biollaz stressed that "should the hypothesis of a transcutaneous passage remain significant in the evaluation of the case, the Athlete would be left with a credibility and good faith problem, in which evaluation was probably not in their competence nor in their mandate". Albeit the Athlete currently alleged that in fact, he did not wear any protective gear such as gloves. In addition, the Athlete claimed that he was never informed by the veterinarian of the precautions to be taken yet he mentioned (report of Judicial Expert) that he worked as an assistant to the veterinarian for various interventions on his horses, including during the administration of granules and any vet would have been wearing and recommending the use of gloves.

75. Therefore, the FEI argued that it was clear from the CHUV Expert Opinion as well as the subsequent clarifications from Professors Buclin and Biollaz that:

- I. The conclusions presented in the CHUV Expert Opinion are based on available scientific literature as well as the Professors experience in clinical pharmacokinetics. The CHUV Expert Opinion clearly mentioned that there was little information on the pharmacokinetics of Clenbuterol in humans, however, there are still some studies published in this respect and they are very helpful to appreciate the circumstances of the current case. In addition, the vast experience and knowledge of Professor Buclin and Biollaz in the field of pharmacology and toxicology should not be underestimated;
- II. The assay method used by the Laboratory was developed for semiquantitative purposes - although the high precision of the outcome was not guaranteed, at least the order of magnitude of the result, reported to the FEI, was correct. Furthermore, it was reconfirmed that the CHUV Expert Opinion considered the significant margin of uncertainty of the measurement in the provided interpretation and conclusions;
- III. The factual background and the alleged "factual inaccuracies" on which the CHUV Expert Opinion relied upon were provided by the Athlete alone. In the Judicial Expert Report stated that the Athlete "never used goggles or a protective mask, but always uses latex gloves during the administration of this or any other treatment to the horses", however the FEI noted that it was the Athlete who engaged the Judicial Expert, provided him with factual feedback on his case and requested his opinion on the possibility of the Spasmobronchal medication being the source of Clenbuterol in Athlete's Samples. It was also the Athlete who sent the Judicial Expert Report to the FEI and relied on it in the proceedings before this case was submitted to the Tribunal;
- IV. The FEI stated, therefore that it was very surprising that the FEI read that the Athlete did not in fact use any gloves during the preparation of the horse's feed in the latest Athlete's submissions and that the CHUV Expert Opinion relies on "serious factual inaccuracies" as indeed those "serious factual inaccuracies" were provided by the Athlete himself and as Professors Buclin and Biollaz mentioned, following the contradicting factual circumstances provided by the Athlete he was now left with a credibility and good faith issue.

76. In summary, the CHUV Expert Opinion as well as the subsequent clarifications from Professors Buclin and Biollaz clearly concluded that the possibility of the Athlete's contamination by a Spasmobronchal medication being the source of the positive Samples was highly improbable.

77. TB was called by the FEI at hearing as their expert witness and submitted that the explanation provided by the Athlete concerning the source of the Clenbuterol findings in the Samples taking into the Laboratory findings was about one hundred times higher than we could expect from accidental contamination via inhalation, skin contact etc. TB then referred to the articles of Yamamoto et al., Zimmer & Bucheler and Yang et al. which concluded that despite the imprecision linked to the limits of the measurement method (as mentioned by the Laboratory) as well as to the approach by extrapolation in return of the inhaled/ingested dose from urinary excretion, the hypothesis of accidental airborne contamination during preparation and administration of the Spasmobronchal medication to the horse was highly improbable. TB also stated that it would have been impossible to inhale such an amount to warrant the Laboratory results that were returned.
78. TB also submitted that in respect of the possibility of Clenbuterol exposure through the eyes, it would be impossible for a teaspoon of clenbuterol to travel via the Athlete's eyes. He furthered that the levels of Clenbuterol found would have taken systematic and repeat exposure with naked hands, to achieve such an amount of the substance, and whilst there may be imprecision, the laboratory results would have to be one hundred 100 times incorrect to warrant such a result.
79. The Athlete's Legal Counsel then asked TB if the Athlete had not worn gloves would this change the Expert's assessment of the case and TB confirmed that if the schedule of exposure (3 days in total) in relation to the urine sampling was correct, the results are absolutely incompatible with accidental contamination. Further to which the Athlete's Legal Counsel argued that it was accidental exposure rather a case of systematic contact by the Athlete that occurred regularly over a long period. However, TB disagreed with the latter position and that permeation of such amounts would require hours of contact with granules of the substance.
80. TB was also asked by the Athlete's Legal Counsel about his comment that "gloves dont matter" and he confirmed that what he meant by saying this was that even within a short passage of time not wearing gloves, the results would not marry up and that certainly without gloves some molecules would pass through the skin, but the amount transferred would not have resulted in the findings presented. TB also stated that in most organic chemistry the product would require handling over a long period of time to produce the results found in this case.
81. The Athlete's Legal Counsel also queried TB regarding his scientific basis for the transdermal contamination of Clenbuterol and that it had been acknowledged that the Yamamoto study had weaknesses, therefore could there be plausible scientific

explanation for the results in this case, but TB disagreed with this position, and that regardless of a Clenbuterol specific study the findings were unlikely, and this was an improbable explanation.

82. Although the FEI was under no duty by the applicable rules to establish how the Clenbuterol entered the Athlete's body, the FEI suggested alternative theories for the ingestion of Clenbuterol by the Athlete, such as use as a way to increase lean muscle mass and reduce body fat.

83. By outlining the above particulars, the FEI does not claim that the Athlete ingested a food supplement containing Clenbuterol but wished to provide an alternative route through which Clenbuterol might have entered the Athlete's body (given that the Athlete admitted taking various supplements and the fact that it was a very common source for a positive finding taking into account other decisions involving the use of Clenbuterol).

84. The FEI also referred to the CAS decision in the Contador case⁹, the CAS Panel stated that the athlete can only succeed in discharging his burden of proof regarding the source of the Prohibited Substance by proving that (1) the alleged scenario was possible and that (2) other sources from which the Prohibited Substance may have entered his body either do not exist or are less likely.

85. In the current case, (1) the scenario alleged by the Athlete was highly improbable, as further explained and evidenced by the CHUV Expert Report as well as the subsequent clarifications from Professors Buclin and Biollaz; and (2) other more likely sources existed from which the Prohibited Substance may have entered the Athlete's body.

86. Consequently, the FEI was not satisfied that the Athlete discharged his burden of proof of establishing how Clenbuterol entered his body and the "threshold requirement" has not been met in this case.

87. In relation to the "intentional character of the violation", the FEI submitted that Article 10.2.3 of the ADRHAs sets out that the term "intentional" which was meant to identify those athletes or other persons who engaged in conduct they knew constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded that risk.

88. Furthermore, pursuant to the comment at Article 10.2.1.1 of the ADRHAs, wherein it

⁹ CAS 2011/A/2384 Union Cycliste Internationale (UCI) v Alberto Contador Velasco & Real Federacion Espanola de Ciclismo (RFEC) & CAS 2011/A/2386 World Anti-Doping Agency (WADA) v Alberto Contador Velasco & RFEC, award of 6 February 2012, paragraphs 56 - 57 & 111 - 113; available at: <https://jurisprudence.tascas.org/Shared%20Documents/2384,%202386.pdf>.

stated that while it was theoretically possible for an athlete or other person to establish that the ADRV was not intentional without showing how the Prohibited Substance entered one's system, it was highly unlikely that in a doping case under Article 2.1 of the ADRHAs that an athlete would be successful in proving that the athlete acted unintentionally without establishing the source of the Prohibited Substance.

89. The FEI noted that CAS case law rarely departed from this principle and CAS panels required that, to conclude that an athlete did not act intentionally without the athlete having established the source of the AAF, certain precise and exceptional circumstances needed to exist.¹⁰
90. The FEI stated that a wealth of CAS jurisprudence existed which exemplified that a protestation of innocence, the lack of sporting incentive to dope, or mere speculation by an athlete as to what may have happened did not satisfy the required standard of proof (balance of probability) and that the mere allegation of a possible occurrence of a fact cannot amount to a demonstration that that fact did actually occur (CAS 2010/A/2268; CAS 2014/A/3820): unverified hypotheses are not sufficient (CAS 99/A/234-235). Instead, the CAS has always been clear that an athlete has a stringent requirement to offer persuasive evidence that the explanation he offered for an AAF was more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions. In short, the Sole Arbitrator cannot base his decision on some speculative guess uncorroborated in any manner." (par.146-148 of the Award).
91. Furthermore, the FEI noted that the alleged lack of usefulness of a prohibited substance in a particular sport does not provide proof that an athlete did not intentionally take such substance.
92. The FEI submitted that in the current case:
- a) The Athlete did not establish the source of the Prohibited Substances in the Athlete's Samples – hence the critical first step in any exculpation of intent was not met; and
 - b) The Athlete did not offer any evidence to support his assertion of lack of intent – a simple protestation of innocence, a clean career or lack of sporting incentive to dope are not sufficient elements to prove lack of intent as established by the CAS jurisprudence cited above.

¹⁰ CAS 2016/A/4534 Mauricio Fiol Villanueva v. Fédération Internationale de Natation (FINA), award of 16 March 2017; available at: <https://jurisprudence.tas-cas.org/Shared%20Documents/4534.pdf> CAS 2017/A/5369 World Anti-Doping Agency (WADA) v. South African Institute for Drug-Free Sport (SAIDS) & Gordon Gilbert, award of 21 June 2018; available at: <https://jurisprudence.tas-cas.org/Shared%20Documents/5369.pdf>.

93. Finally, the FEI was sceptical of the Athlete's claim that he was not warned by his veterinarian as to the precautions to be undertaken when administering a Spasmobronchal product to the horse. The Athlete claimed that he worked as an assistant to the veterinarian for various interventions on his horses, including during the administration of granules. As such, it would be expected the veterinarian would wear gloves and would also have recommended the Athlete do the same.
94. Regarding the disqualification of results, the FEI submitted that Article 9 of the ADRHAs, should be applied even if the period of Ineligibility is reduced or eliminated under Article 10 of the ADRHA. In these proceedings, the FEI noted that both positive Samples provided by the Athlete are In-Competition Samples and therefore the competitive results obtained by the Athlete on the days of the Samples' Collection should be automatically disqualified with all resulting consequences.
95. Furthermore, referring to Article 10.1 of the ADRHAs, the FEI confirmed that no special circumstances existed in this case which would prevent the cancellation of Athlete's competitive results obtained after the day of the Sample 1 Collection – 21 May 2022. This assertion was further reinforced by the fact that the Sample 2, which was collected more than 1 month after the Sample 1, still tested positive for Clenbuterol. The FEI therefore concluded that the positive result in the Sample 2 attested that Clenbuterol was present in the Athlete's body from 21 May 2022 to at least 8 July 2022 (but it is quite probable that Clenbuterol was also present in the Athlete's body on 10 July 2022, the date of the Athlete's last FEI competitions).
96. The FEI therefore respectfully submitted that all the competitive results of the Athlete obtained from the date of the Sample 1 Collection (21 May 2022) until the day of the FEI Tribunal's decision in this case shall be disqualified with resulting consequences i.e., forfeiture of all medals, points, prize money, etc in accordance with Articles 10.1 and 10.10 of the ADRHA.
97. Concerning the fine and costs, the FEI referred to Articles 10.12.1 & 2 of the ADRHAs as well as to the FEI Guidelines for Fines and Contributions towards Legal Costs. In accordance with those Guidelines, the FEI requested that a fine of CHF 7'500 be imposed on the Athlete, and that the Athlete should be ordered to pay CHF 3'000 as a contribution to the legal costs that the FEI has incurred in pursuing this matter.
98. Therefore, the FEI requested that the Panel:
- a) uphold the charge that the Athlete violated Articles 2.1 of the ADHRAs;

b) impose a period of Ineligibility of four (4) years on the Athlete commencing on the date of the Tribunal's final decision in this matter (the Provisional Suspension served by the Athlete shall be credited against the imposed Ineligibility period);

c) disqualify all results obtained by the Athlete at Event 1 and Event 2, with all resulting consequences, including forfeiture of any medals, points, and prizes pursuant to ADRHA Articles 9 and 10.1;

d) disqualify all other competitive results obtained by the Athlete from the date of Sample 1 collection (21 May 2022), with all resulting consequences, including forfeiture of any medals, points, and prizes pursuant to Article 10.10 of the ADHRAs;

e) impose a fine on the Athlete of CHF 7,500; and

f) order the Athlete to pay 3,000 CHF as a contribution to the legal costs that the FEI has incurred in these proceedings.

VI. Jurisdiction:

99. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, Articles 8.1.1.1 and 8.1.2.1 of the ADRHAs, as well as Article 18 of the IRs. The Athlete is a member of the ESP-NF, and as such is bound by the ADRHAs. The jurisdiction of the Tribunal is undisputed.

VII. Legal Discussion:

100. Although the Tribunal has fully considered all the facts, allegations, legal arguments, and evidence in the present proceedings, it will only refer to the submissions and evidence it considers necessary to explain its reasoning in this decision.

101. Firstly, the Panel recalls that the purpose of ADRHAs is to protect the health of athletes and provide them with the opportunity to pursue human excellence without the use of Prohibited Substances and Prohibited Methods. The ADRHAs seek to maintain the integrity of sport by ensuring respect for rules, other competitors, fair competition, a level playing field, and the value of clean sport to the world. The integrity of sport is primordial and fundamental for its existence. The ADRHAs apply equally to athletes, whether national or international and regardless of what equestrian discipline they practice.

102. Moreover, CAS panels have confirmed the principle that ignorance of the ADRVs is no

defence.¹¹ For instance, the CAS panel in WADA v. Galiulina & FIG¹² stated: “[...] Unfortunately for the Athlete, there is no such thing as “innocent” violation of the rules. In the interest of fair competition, the anti-doping rules must be applied with equality to all competitors, and ignorance is no defence. Athletes and their coaches and teams must take care to conduct themselves in accordance with the rules and regulations that correspond to their sport and to their level of competition. In sum, this is an open-and-shut case in which WADA’s appeal is irresistible, irrespective of the Athlete’s apparent naivety.”

i. General Considerations

a) The Burden of Proof

103. Pursuant to Article 3.1 of the ADRHAs, the FEI bears the burden of establishing the ADRV. However, if the FEI can establish that an ADRV has been committed, the Athlete bears the burden of establishing the specified facts or circumstances on which they rely.

104. As confirmed by various CAS and FEI panels, the Athlete must present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient. Furthermore, it was suggested by various CAS panels that the 51% threshold was understood as meaning that panels should separately compare each alternative scenario with the scenario invoked by the Athlete. The Athlete’s scenario has to reach a 51% threshold for it to be successful.¹³

b) The Standard of Proof

105. According to Article 3.1 of the ADRHAs different standards of proof apply in doping proceedings: on the one hand, “[t]he standard of proof shall be whether the FEI 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.” On the other hand, the Athlete’s “standard of proof shall be by a balance of probability”.

ii. Did the Athlete commit an ADRV?

106. The Athlete’s sample confirmed the presence of Clenbuterol which is a Non-Specified Substance according to the 2022 Prohibited List¹⁴ and is classified in Class S1.2 Other

¹¹ Balandin v. RUSADA (CAS 2019/A/6249), para. 59 and WADA v. West & FIM (CAS 2012/A/3029), para. 71

¹² WADA v. Galiulina & FIG (CAS 2012/A/3037), para. 37.

¹³ See for example Viret, M., “Evidence in Anti-Doping at the Intersection of Science & Law”, Asser International Sports Law Series, Springer 2016, (pp. 521-538), as well as CAS 2011/A/2234 & 2386, UCI v. Contador & RFEC, and CAS 2010/A/2230, IWBF v. UKAD & Gibbs. See for example also FEI Tribunal Decision 2017/BS32 SAURA DE FONDCOMBE dated 24 February 2020.

¹⁴ https://www.wadaama.org/sites/default/files/resources/files/2022list_final_en.pdf- 2022 Prohibited List, effective 1 January 2022.

Anabolic Agents. It is prohibited at all times (In and Out-of-Competition).

107. As set forth in Article 2.1 of the ADRHAs, sufficient proof of an ADRV is established by the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample.
108. The Panel is satisfied that the reports relating to the A Samples reflects that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. Therefore, the Panel is satisfied that the test results evidence the presence of Clenbuterol taken from the Athlete at the Events.
109. In addition, despite being informed of his right to request the analysis of the B Sample, the Athlete decided not to request this.
110. The Panel also noted that the Athlete denied having consciously taken any kind of Prohibited Substance or medication that might have contained Clenbuterol in his earliest submissions to the FEI. Nonetheless, the Panel reminds the Athlete that any ADRV is a strict liability offence, which means that an Athlete is responsible for any Prohibited Substances found in his system, regardless of how the Prohibited Substances entered his system.
111. As a result, in accordance with Article 2.1.2 of the ADRHAs, the Panel confirms that FEI has established that the Athlete committed an ADRV.

iii. If so, did he commit the ADRV intentionally?

112. The Panel notes that Article 10.2.1 of the ADRHAs provides that an athlete with no previous doping offences who violates Article 2.1 and whose violation involves a Non-Specified Substance is subject to a period of ineligibility of four years, unless the athlete can establish that the ADRV was not intentional (in which case the Ineligibility period shall be two years in accordance with Article 10.2.2 of the ADRHA, subject to potential reductions).
113. Furthermore, in accordance with Article 10.2.3 of the ADRHAs, the term "intentional" is meant to identify those Athletes or other Persons who *"engage in conduct which they knew constituted an ADRV 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"*.
114. Taking the latter definition of the term "intentional" into account, the Panel refers to the comment added to Article 10.2.1.1 of the ADRHAs, which provides *"that while it is theoretically possible for an athlete or other person to establish that the anti-doping rule*

violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an athlete will be successful in proving that the athlete acted unintentionally without establishing the source of the Prohibited Substance". Furthermore, the Panel accepts that CAS case law rarely departs from this principle and CAS panels require that, to conclude that an athlete did not act intentionally without the athlete having established the source of the AAF, certain precise and exceptional circumstances must exist.

115. In this regard, the Panel notes the jurisprudence in the case *Mauricio Filo Villanueva v FINA*¹⁵, wherein the CAS panel found that *"the proof of source would be an important, even critical first step in any exculpation of intent. Where an athlete cannot prove source it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him"*. Additionally, in the case of *WADA v SAIDS & Gordon Gilbert*¹⁶, the Sole Arbitrator observed that *"it could be de facto difficult for an athlete to establish lack of intent to commit an anti-doping rule violation demonstrated by presence of a prohibited substance in his sample if he cannot even establish the source of such substance: proof of source would be an important, even critical, first step in any exculpation of intent, because intent, or its lack, are more easily demonstrated and/or verified with respect to an identified "route of ingestion"*.
116. In this case, the Panel considers that the Athlete has not discharged his burden to prove the lack of intention in committing the ADRV, as the source has not been sufficiently demonstrated.
117. The Athlete has presented several possible scenarios; however, the Panel finds that none of them surpass the 51% threshold required by the applicable regulations.
118. The Panel found that the CHUV Expert Report and the subsequent clarifications from Professors Buclin and Biollaz were not sufficiently rebutted by the Athlete nor his expert. The Panel finds that although it has been established that the scenarios of cross-contamination through skin, mouth or eyes is possible, it also finds that this cross-contamination is unlikely to have caused the concentrations of Clenbuterol found in the Samples at the time they were taken. Although the Panel agrees that the findings by the Laboratory are "qualitative" rather than "quantitative", the Panel does note that the Laboratory itself has pointed out that the concentration of the mentioned substance was obtained by comparison of the response of the Sample with the response of a positive quality control.

¹⁵ CAS 2016/A/4534 *Mauricio Filo Villanueva v. Fédération Internationale de Natation (FINA)*, award of 16 March 2017; available at: <https://jurisprudence.tas-cas.org/Shared%20Documents/4534.pdf>.

¹⁶ CAS 2017/A/5369 *World Anti-Doping Agency (WADA) v. South African Institute for Drug-Free Sport (SAIDS) & Gordon Gilbert*, award of 21 June 2018; available at: <https://jurisprudence.tas-cas.org/Shared%20Documents/5369.pdf>.

119. The Panel also notes that the Athlete confirmed that he took supplements around the time of the doping controls and because he understood that none of those supplements seemed to contain the Prohibited Substance Clenbuterol, he did not take any action to make detailed enquiries for information about such supplements.
120. As stated above, providing scenarios that are – in the Athlete’s views – “possible”, is not enough to establish the source of the Prohibited Substance in the concentrations found by the Laboratory. Moreover, absent the necessary factual and scientific evidence, the arguments concerning a clean career or lack of sporting incentive to use the Prohibited Substance are not sufficient to prove lack of intent.
121. The Panel finds that the Athlete has not provided sufficient evidence to convince the Panel, on a balance of probabilities, about the source of the Clenbuterol found in his Samples. In addition, he has not provided sufficient evidence that could allow for the exceptional scenario in which lack of intent is demonstrated without establishing the source. Such avenue would have required much more persuasive factual and scientific evidence as well as closing other possible doors.
122. Consequently, the Panel is satisfied that the Athlete did not establish the source of the Prohibited Substance nor prove the non-intentional nature of his violation: the critical first step in any exculpation of intent.
123. Since the Athlete was not successful in demonstrating the source of Clenbuterol in his Samples or the non-intentional character of his violations, the Panel will not assess the level of Fault or Negligence of the Athlete but does note that the Athlete is an experienced horseman and has worked as an assistant to his veterinarian yet claims not to have taken basic precautions when administering a substance to his horse.

iv. Sanctions.

124. As the Athlete has failed to discharge his burden of proving the source of the Prohibited Substance and that he acted without intent, the Panel is unable to depart from the default period of ineligibility of four (4) years established in Article 10.2.1.1. of the ADRHAs.
125. In accordance with Article 7.4.1 of the ADRHAs, the Athlete was provisionally suspended as of 1 September 2022. Therefore, as established in Article 10.13.2.1 of the ADRHAs, the Athlete will receive credit for the period of Provisional Suspension already served against the imposed ineligibility period of four (4) years.

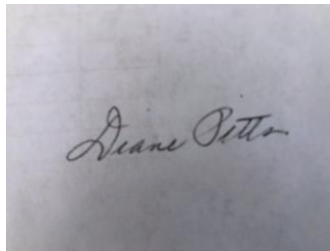
126. In addition, pursuant to Articles 9 and 10.1 of the ADRHAs, the Panel disqualifies all the results of the Athlete obtained in the Events, with the consequent forfeiture of all medals, points, prize money, etc. that he may have won.
127. All other competitive results obtained by the Athlete from the dates of the first sample collection (i.e., 21 May 2022) are also disqualified, with all resulting consequences, including forfeiture of any medals, points and prizes pursuant to Article 10.10 of the ADRHAs.
128. Article 10.12 of the ADRHAs enables the Panel to impose, at its discretion and subject to the principle of proportionality, the following financial consequences on the Athlete:
- (i) Have the FEI recover from the Athlete or other Person costs associated with the anti-doping rule violation; and/or
 - (ii) Fine the Athlete or other Person in an amount up to 15'000 Swiss Francs, and in accordance with the FEI Guidelines for Fines and Contributions towards Legal Costs.
129. In the present case, it was the Athlete's personal duty to ensure that no Prohibited Substance was present in his body during the Event. Therefore, the Tribunal rules that a fine of CHF 5,000 is appropriate. In addition, given the complexities of this case that were aggravated by the changing explanations and scenarios offered by the Athlete, the Tribunal orders the Athlete to contribute to the FEI's costs in the amount of CHF 3,000. This amount is also in line with the FEI Guidelines for Fines and Contributions Towards Legal Costs.

VIII. Terms of Decision

1. The Panel finds that the FEI has established to its comfortable satisfaction that the Athlete has committed an ADRV. Accordingly, the Panel confirms the following terms of this Decision:
 - a. Mr. Agusti ELIAS LARA has infringed Article 2.1 of the ADRHAs.
 - b. Mr. Agusti ELIAS LARA shall be suspended for a period of four (4) years in line with Article 10.2.1.1 of the ADRHAs. The period of the ineligibility will be effective as from the day of notification of this decision, providing credit for the Provisional Suspension already served).

- c. All results obtained by Mr. Agusti ELIAS LARA at the Events are disqualified, with all resulting consequences, including forfeiture of any medals, points, and prizes pursuant to Articles 9 and 10.1 of the ADRHAs.
 - d. All other competitive results obtained by Mr. Agusti ELIAS LARA from the date of the Sample 1 collection (i.e., 21 May 2022) are disqualified, with all resulting consequences, including forfeiture of any medals, points, and prizes pursuant to Article 10.10 of the ADRHAs.
 - e. Mr. Agusti ELIAS LARA is ordered to pay a fine of five thousand Swiss Francs (CHF 5'000).
 - f. Mr. Agusti ELIAS LARA is ordered to pay three thousand Swiss Francs (CHF 3'000) as a contribution to the legal costs that the FEI has incurred in these proceedings.
2. This decision is subject to appeal in accordance with Article 13.2 of the ADRHAs. 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 of the ADRHAs.

FOR THE TRIBUNAL

A rectangular box containing a handwritten signature in cursive script, which appears to read "Diane Pitts".

Ms. Diane Pitts, Panel Chair