



Media Release

30 August 2004

The following is a summary of the decision of the Sport Disputes Tribunal of New Zealand [SDT] in the case of the *New Zealand Olympic Wrestling Union [WNZ] v Mark Hogarth [SDT /8/04]*. It is not the written decision of the Tribunal for the purposes of Tribunal Rule 24.3.

The New Zealand Sports Disputes Tribunal has issued a reprimand, and ordered that wrestler Mark Hogarth should pay costs, after he tested positive to the use of Terbutaline, a substance banned by the World Anti-Doping Code 2004 Prohibited List. Mr. Hogarth will be required to remain on the Drug Register for Out of Competition testing for a period of two years.

The Tribunal noted that Mr Hogarth has been an asthmatic from childhood, and used Terbutaline for legitimate medical purposes (rather than to enhance performance). There is no suggestion that Mr. Hogarth is a drug cheat, but the Tribunal considered that an athlete must take responsibility for his actions in using a substance banned under the World Anti Doping Code 2004 Prohibited List.

The use of Terbutaline is permitted provided a Therapeutic Use Exemption [TUE] has been granted by the New Zealand Sports Drug Agency [the Agency]. After he tested positive Mr Hogarth obtained a TUE. The Agency acknowledged through its Counsel that *“the violation was more a technical breach of the rules rather than any deliberate flouting of them”*. It ruled that it had no jurisdiction to consider a retroactive approval which Mr Hogarth sought as a first line of defence.

Under its anti-Doping policy WNZ referred the case to the Tribunal for the imposition of a penalty, and initially asked for sanctions which included a ban from competition. It altered its stance when the athlete’s medical background was clarified.

The Tribunal has been guided by the anti doping policy of WNZ and its Anti- Doping Code, which make specific reference to the new World Anti-Doping Code [the WADA Code]. Both Wrestling’s international body FILA, and the New Zealand Olympic Committee adhere to the code and WNZ is a member of both.

The Tribunal concluded that it had a wide discretion as to sanction under WNZ’s rules, which do not compel suspension, but it also considered the application of the WADA

code to Mr. Hogarth's case. Under the WADA code the prohibited list may identify specified substances which are susceptible to unintentional anti-doping violations because of their general availability in medicinal products. Where an athlete can establish that the use of such a specified substance was not intended to enhance performance, a ban or suspension is not mandatory in the case of a first violation.

The Tribunal emphasised that athletes must take responsibility for compliance with anti-Doping rules. It is not an answer to plead ignorance or misunderstanding. Nevertheless, National Sporting Organizations have a responsibility to assist with the education and administrative processes required. In this case WNZ acknowledged that it could have done more to inform Mr Hogarth of his obligations and rights to a TUE under the new anti-Doping regime which applied from 1 January 2004.

The Tribunal made other observations including the circumstances in which an athlete is entered on the out of competition Drug Register. An early part of Mr Hogarth's defence was whether he should have been entered on the Register and his case is illustrative of how problems might arise. The Tribunal believes the need for clarity over which athletes are to be entered on the Drug Register, and how they may be removed from it, is manifest.

The written decision of the Tribunal dated 30 August 2004 has been released. Copies may be obtained from the Registrar of the Tribunal. A copy will be placed on the Tribunal's website: <http://www.sportstribunal.org.nz/decisions.html>

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