

MEDIA RELEASE

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Sports Tribunal reprimands boxer for anti-doping violation

The Sports Tribunal has reprimanded Tom (Zig Zag) Wallace for an anti-doping violation involving the prohibited substance probenecid.

Mr Wallace tested positive for probenecid in an out of competition drug test. He admitted the violation and gave evidence that it was inadvertent. A doctor, at an accident and emergency clinic, prescribed and administered him probenecid tablets as part of treatment for cellulitis in his knee. Neither the doctor nor he realised probenecid was a prohibited substance in sport. Mr Wallace had the balance of the prescribed probenecid administered when he later visited his own doctor. The Tribunal concluded the prescribed probenecid caused the positive test.

The Tribunal accepted evidence from Mr Wallace, and the emergency clinic doctor, that Mr Wallace had informed the doctor that he was a competitive boxer subject to drug testing and had asked if the suggested treatment would cause any problems if he was later drug tested. He accepted the doctor's assurance it would not. However, the doctor did not check whether probenecid was a prohibited substance in sport but had wrongly assumed it would not be.

The Tribunal had considerable sympathy for Mr Wallace and accepted there was no significant fault on his part but regretted it could not accept his defence that he had no fault at all.

He had received drug education and educational material, including a wallet card and athletes' handbook, containing instructions on steps athletes need to take when being prescribed medication. While he complied with the step of advising the doctor that he was an athlete subject to drug testing, there were two other steps clearly set out in the wallet card that he needed to follow but did not do. He did not request the doctor to check the MIMS New Ethicals Catalogue to clarify the status of probenecid (which clearly states probenecid is prohibited) as advised to do in the wallet card. This would have then led to the second step of making an application for therapeutic use exemption if no other treatment alternatives were available (requiring filling out a form and treatment can begin immediately - such exemptions can be made retrospectively in emergency situations). Other relevant factors included that probenecid is included as an example of a prohibited drug in the athletes' handbook and that Mr Wallace did not raise the issue of whether probenecid was prohibited when subsequently visiting his own doctor who also administered it to him.

Prior to 1 January 2009, the mandatory penalty for a violation involving probenecid was 2 years' suspension. If an athlete succeeded on a defence of "no significant fault" (as opposed to "no fault") the minimum penalty under the Sports Anti-Doping Rules was a suspension of 1 year. However, the Tribunal did not need to consider penalties under the no significant fault defence further as under the new Sports Anti-Doping Rules 2009, probenecid has been re-classified as a "specified substance" with a range of lesser penalties that can be imposed. These penalties range from a minimum of a reprimand and no suspension to a maximum of 2

years' suspension. Although the violation happened before 1 January 2009, the new rules allow the Tribunal to impose these lesser penalties if the Tribunal considers it appropriate.

The Tribunal noted a recent case where it had suspended an athlete for 2 months who had committed a violation also due to taking prescribed probenecid. A lesser penalty was appropriate in the present case. Unlike the athlete in the other case, Mr Wallace informed the doctor that he was an athlete subject to drug testing and asked whether the treatment would cause any problems for drug testing. He relied upon the doctor's assurances and although this did not absolve him of all his obligations, it was a factor to be taken into account in determining penalty. He also had voluntarily withdrawn from competing when advised of the positive test.

Taking all the circumstances into account, the Tribunal thought Mr Wallace's degree of fault was "nearer the trivial rather than the grave extremes of the measure of fault" and that the appropriate penalty was the minimum penalty of a reprimand only.

The decision in this case will be made available for download from the website of the Sports Tribunal (www.sportstribunal.org.nz). See *Drug Free Sport New Zealand v Tom (Zig Zag) Wallace* (ST 15/08). Copies can also be obtained directly from Brent Ellis, Registrar, Sports Tribunal of New Zealand (telephone: 0800 55 66 80; e-mail: info@sportstribunal.org.nz).