

<b>BETWEEN</b>	<b>SPORT INTEGRITY COMMISSION</b> <b>Applicant</b>
<b>AND</b>	<b>X</b> <b>Respondent</b>
<b>AND</b>	<b>BOXING NEW ZEALAND</b> <b>Interested party</b>

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**DECISION  
2 JULY 2025**

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<b>Hearing</b>	19 June 2025 (virtually via Teams)
<b>Parties</b>	Hayden Tapper & Wendy Pickering, Sport Integrity Commission David Bullock & Ben Forbes, counsel for Applicant X, Respondent Todd Nicholls, counsel for Respondent  Boxing New Zealand (no appearance)
<b>Panel</b>	John Macdonald (Chair) Dr Sarah Beable (Member) Harete Hipango (Member)
<b>Registrar</b>	Luke Macris

## Introduction

1. [Real name redacted] (Ms X) is a New Zealand boxer and is registered with Boxing New Zealand (Boxing NZ), which had adopted the 2024 Sports Anti-Doping Rules (SADR) as its anti-doping policy, as promulgated by the Sport Integrity Commission (Commission) – formerly Drug Free Sport New Zealand.
2. A sample was collected from Ms X on 2 June 2024 when competing at the [event redacted]. Upon analysis, the sample showed the presence of Phentermine, which is a non-specified substance prohibited in-competition only, under S6.A: Non-Specified Stimulants of the 2024 WADA Prohibited List.
3. A provisional suspension order (PSO) in respect of Ms X was made by the Tribunal without opposition on 21 February 2025.
4. The Commission brought proceedings before the Tribunal on 13 March 2025 for Anti-Doping Rules Violations (ADRVs) against Ms X alleging breaches of r 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) and r 2.2 (Use or Attempted Use by an Athlete of a Prohibited Substance or Prohibited Method) of the SADR.
5. On 9 April 2025, Ms X admitted the violations but disputed the asserted period of ineligibility and sought to be heard on the issue of sanction.
6. The Commission seeks a four-year period of ineligibility under r 10.2.1, with credit for the period of the provisional suspension.
7. Ms X's position is that:
  - (a) Having regard to r 10.2.1.1 and r 10.2.3, the four-year period of ineligibility sought by the Commission should be reduced to two years on the basis that her use of Phentermine was not intentional.
  - (b) A further reduction of six months should be made to recognise her admission of the violations at the first reasonable opportunity after instructing counsel and receiving legal advice.
  - (c) The resulting 18-month period of ineligibility should then be backdated to 2 June 2024, being the date the sample was taken.

8. Although Boxing NZ elected to become an Interested Party in this proceeding, it has played no active part and did not appear at the hearing on sanction.

### **Evidence Relevant to Sanction**

9. As to the evidence presented to the Tribunal, three witnesses provided written statements or affidavits: Mr Tapper, Ms X, and Mr X (Ms X's husband) with only Ms X and her husband being required for cross-examination. As it transpired, Mr X was unable to attend the hearing due to work commitments.
10. Mr Tapper is the Investigations and Intelligence Manager at the Commission, with responsibility for managing the intelligence function and investigations into ADRVs. He confirmed in his statement that the Commission received notice of Ms X's Adverse Analytical Finding (AAF) on 9 July 2024. He advised Ms X of this on 23 July 2024 and also of the possibility of applying for a retroactive Therapeutic Use Exemption (TUE) for her use of Phentermine. Ms X subsequently applied for a retroactive TUE in November 2024, but her application was unsuccessful. The Tribunal is unaware of the reasons for it being declined.
11. In respect of the testing process conducted on 2 June 2024, Mr Tapper referred to Ms X having declared on her Doping Control Form that she had taken some medication prior to the boxing event, including Duromine, which unbeknown to her contained the active ingredient Phentermine.
12. Ms X said she started boxing in corporate events around 2017 and had participated in amateur boxing through Boxing NZ in the last two to three years. She stated that she boxed to keep fit and lose weight. As she put it:

*"Boxing was a fun sport for me. It was not about winning or losing. It was a leisure-time activity that helped me lose weight".*
13. To assist in her weight loss efforts, Ms X commenced taking Duromine in about January 2024, having obtained it via prescription through an online GP. She accepted under cross-examination that she had not disclosed to the online GP any information about her boxing or sporting activities because she was unaware that it needed to be disclosed. She said the medication helped her to lose weight which she found to be positive for her health and general well-being.
14. Ms X insisted that she was unaware that Phentermine was a prohibited substance. While she acknowledged that there might have been some information conveyed to

her about anti-doping when she registered with Boxing NZ, she says that it was not effectively publicised and nor was it easy to access.

15. Ordinarily, we would expect Mr Tapper to have detailed any anti-doping education received by an athlete of which the Commission was aware, but in this case no such information has been provided. We further observe that it would have been helpful if Boxing NZ had been able to provide details of what anti-doping information, if any, had been conveyed to Ms X.
16. Our impression then is that Ms X had not received any meaningful anti-doping education as a *Recreational Athlete* – a status defined by the SADR and acknowledged as applicable to Ms X by the Commission.
17. Ms X said that she did not know that she might be tested at the boxing event. We also note that there was no evidence or indication that she had been drug tested previously.
18. As to her preparation for what was supposed to be a title fight on 2 June 2024, Ms X says that she stopped taking Duromine on 29 May 2024, being three days before the event.
19. In cross-examination, Mr Bullock, counsel for the Commission, put to her that she stopped because she knew that Phentermine was a prohibited substance and she did not want to be caught. She denied that was the case and explained that, as an asthmatic, she stopped taking the medication because she found it negatively affected her lungs during intense physical activity.
20. Mr Bullock further suggested to Ms X that she had taken Phentermine to compete in a lower weight division. She denied it was for that purpose, even though unwittingly that is what might have occurred. She made clear that she had started taking Duromine well in advance of the boxing event and only learned of the weight requirement for the title fight a mere ten days before. She had anticipated fighting in a slightly higher weight class but unfortunately there were no available opponents. She described taking saunas as her main strategy to cut weight leading up to the fight. Ultimately, while the fight still went ahead, it was not a title fight because Ms X failed to meet the weight requirement.
21. We do not recall it being canvassed in cross-examination, but another factor which could support a conclusion that Ms X had taken Phentermine intentionally, was her

decision to purchase the Duromine online, rather than in person through her own doctor.

22. In respect of Mr X, his affidavit was brief and merely supported his wife's assertions that Duromine was taken for weight-loss and health reasons, rather than to enhance her performance as a boxer. As he did not appear for cross-examination, we have decided not to place any weight on his evidence.

### Issues

23. Mr Nicholls, counsel for Ms X, did not pursue a defence of no significant fault or negligence under r 10.6. Presumably this was because he had discounted it as a viable option – and so it was not at issue.
24. Instead, given that Ms X admitted the ADVRs, two issues arise for determination:
- (a) Has Ms X established on the balance of probabilities that the anti-doping rule violations were “not intentional” under r 10.2.1.1 (where “intentional” is defined at r 10.2.3)?
  - (b) Beyond the sanction imposed under r 10.2, are there any other reductions available to Ms X under the SADR, apart from backdating the commencement of the period of ineligibility to the date the PSO was imposed under r 10.13.2?

### “Not intentional”

25. Rule 10.2.3 defines “intentional” with the relevant portions of the provision reading as follows:

... the term “intentional” is meant to identify those *Athletes* or other *Persons* who engage in conduct which they 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....

[referred to as Limbs #1 and #2]

....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.

[referred to as Limb #3]

### Limbs #1 and #2

26. The first two limbs of r 10.2.3 require the Tribunal to assess whether Ms X has established on the balance of probabilities that: (a) She did not know that by taking Duromine she was engaging in conduct that constituted an anti-doping rule violation (Limb #1); and (b) She did not know there was a significant risk that it might be an anti-doping rule violation and manifestly disregarded that risk (Limb #2). Ms X must establish both Limb #1 and Limb #2 to engage this aspect of the “not intentional” provision.
27. In respect of the first two limbs, Mr Bullock relied primarily on Ms X’s decision to stop taking Phentermine three days prior to the fight on 2 June 2024, as a clear indication that she knew it was a prohibited substance, and that she also knew that there was a risk of being tested resulting in an anti-doping rule violation but carried on regardless.
28. As previously outlined, Ms X rejected that proposition, insisting that she did not know that Phentermine was a prohibited substance and explaining that she stopped taking it because she found it negatively affected her lungs.
29. In relation to Ms X obtaining Duromine from an online GP, rather than going in person to her own doctor, we do not see anything unusual or suspicious about that. It might simply have been a question of convenience or wishing to avoid the embarrassment of having to raise the issue of her weight with her own doctor.
30. It seems to the Tribunal that Ms X’s real mistake in obtaining a prescription for Duromine online was her failure to advise the online GP that she was a competitive boxer. That would have alerted the online GP to the fact that Ms X could not be prescribed any medication that contained prohibited substances.
31. The difficulty with this aspect, and it has troubled the Tribunal, is that the evidence as to what Ms X was told about anti-doping when registering with Boxing NZ remains vague. As mentioned, there has also been no input from Boxing NZ. In the end we have decided to proceed on the evidence before us. As we have no evidence to the contrary, we approach the matter on the basis Ms X did not know that Duromine contained a prohibited substance or that she had any obligation to tell the online GP that she was a competitive boxer.

32. In assessing this issue, we have reminded ourselves that Ms X was neither a National-Level Athlete, High-Level Athlete nor International-Level-Athlete with all the higher expectations that went with such status. She was instead a Recreational Athlete.
33. We found Ms X to be an honest and straightforward witness. Her claim that she did not know that Phentermine was a prohibited substance was convincing and entirely in keeping with her status as a *Recreational Athlete*, and one whom we suspect had not previously had the benefit of any meaningful anti-doping education.
34. In a similar vein, the fact that Ms X readily acknowledged her use of Duromine on the Drug Control Form seems surprising and counterintuitive, if she had known all along that it contained a prohibited substance and was seeking to hide that fact.
35. As to Ms X's decision to stop taking Duromine three days before the competition, rather than having any sinister connotations, we are satisfied that it merely confirms that taking Duromine was all about losing weight and remaining healthy. She believed that taking the Duromine would harm her sporting performance, which is why she stopped taking it. We further note that Ms X said that she did not know that she might be tested at the event, which runs counter to the suggestion that she stopped taking it to avoid the risk of being tested.
36. Having considered the evidence and the submissions of counsel, we conclude that Ms X has satisfied us on the balance of probabilities – that it is more probable than not – that her use of Phentermine was not intentional. That reflects our acceptance that she did not know that Phentermine was a prohibited substance and that by taking it she did not know that it constituted an anti-doping rule violation. Similarly, she did not know that there was a risk, let alone a significant risk, that it might constitute or result in an anti-doping rule violation and then had manifestly disregarded that risk.

### Limb #3

37. Limb #3 provides another definition (separate from Limb #1 and Limb #2) of “not intentional” under r 10.2.3 that can be engaged by an athlete. Under Limb #3 the burden is on Ms X to establish, on the balance of probabilities, that her use of Phentermine occurred “Out-of-Competition” and “in a context unrelated to sport performance”.
38. On the first issue, Ms X said that she stopped using Phentermine on 29 May 2024, being three days before the fight. This factual assertion went unchallenged, and

accordingly the Tribunal finds her use of Phentermine occurred “Out-of-Competition” as defined by the SADR.

39. On the second issue, as to whether such use was “in a context unrelated to sport performance” Mr Nicholls submitted that it was not, relying on Ms X’s evidence to that effect and that her use of Duromine was for health and well-being reasons.
40. Mr Bullock, on the other hand, argued that there was an inexorable connection between Ms X’s weight and her sport performance because boxing was a sport categorised by weight classes/divisions. He submitted that the use of a weight-loss drug such as Duromine, which could help an athlete to gain entry into a lower weight class, must be related to “sport performance”.
41. The Tribunal accepts that the conduct of a boxer who knowingly takes a prohibited substance to lose weight for the purpose of entry into a lower weight division is clearly related to “sport performance”. However, we consider Ms X’s position to be quite different for the obvious reason that she did not know that Duromine (a legitimate weight-loss medication) contained, as its active ingredient, a prohibited substance in the form of Phentermine. That is a finding we have made which, in our view, makes it difficult to dismiss out of hand her assertion that it was “unrelated to sport performance”.
42. We consider it important to look at the context in which the Duromine was used. Ms X had been using it over a period of five or six months as part of an established weight loss strategy and part of maintaining good health. That was plainly unrelated to sport performance. Importantly, this is also not a situation of someone suddenly going out and knowingly obtaining a prohibited substance to lose weight so as to be able to compete in a lower weight division.
43. Given the length of time Ms X had been using Duromine we assume that it is a long-term weight loss drug and not something that would rapidly drop weight. Furthermore, as we have already found that her use had been unrelated to sport performance and instead was fundamentally for weight loss and the health benefits that flowed from that, the question for the Tribunal is whether anything changed 10 days out from the fight scheduled for 2 June 2024.
44. In our assessment nothing changed. While Ms X continued to use Duromine there was no sudden increase in her daily dosage or anything else that could be viewed as a response to the upcoming fight. For that reason, we are satisfied that her use of



Duromine remained unrelated to sport performance but was for long term health benefits.

45. As we are satisfied that the use of Phentermine was not intentional, under either Limbs #1-2 or Limb #3, the four-year period of ineligibility is reduced to two-years under r. 10.2.2.

### **Further Deductions**

46. In respect of any further deductions, Mr Nicholls submitted that the Tribunal should allow a discount of six months for Ms X's admission of the violations and the sanction should be backdated to the date the sample was taken on 2 June 2024.
47. We suspect that in seeking the six-month discount, Mr Nicholls is influenced by his experience in the criminal courts where a guilty entered at the first available opportunity would attract the maximum allowable discount, with decreasing discounts according to how late the guilty plea was entered. However, a guilty plea entered on the morning of a trial or even during a trial is still likely to attract some discount.
48. In reply, Mr Bullock submits that beyond the one-year deduction available under r 10.8.1, the strict requirements for which Ms X has failed to meet, there is no other rule which allows the discount Mr Nicholls is seeking. He also points to r 10.13.2.3 which expressly states that, "No credit against a period of ineligibility shall be given for any time before the effective date of the Provisional Suspension Order....".
49. In response to that and a concern as to whether as a matter of rule interpretation Ms X might still be eligible for some discount for her admission of the violations, we sought further submissions from counsel, paying particular regard to r 10.8.2.
50. Having received and considered further submissions on that matter we accept that the Commission is correct. Given that the issue of no significant fault or negligence has not been raised there is no other rule under the SADR which permits allowing the discount sought.
51. Reverting to r 10.8.1, that provision allowed for a deduction of one year if within 20 days Ms X admitted the violations and accepted the Commission's asserted period of ineligibility. Ms X was about six days too late in admitting the violations and she did not accept the asserted period of ineligibility. Of course, even if she had met those requirements, it would only have meant that the four-year period of ineligibility would be reduced to three years. As it transpired, having been able to establish that her use

of Phentermine was not intentional, she was better off in the sense that it brought the period of ineligibility down from four years to two years.

### **Comments on Sanction Imposed**

52. The Commission was entitled to advocate for a four-year period of ineligibility and to strongly resist Ms X's efforts to establish that her use of Phentermine was not intentional. That was strictly in accordance with the SADR. It was, however, also clear to the Tribunal that the Commission viewed the four-year period of ineligibility as being the appropriate sanction in any event. Again, it was entitled to that view, even though it is not one that we share.
53. In considering this matter, the Tribunal has found it difficult to avoid a comparison between the sanction we appear to be obliged to impose on Ms X, a recreational athlete, and the agreed sanction of a period of ineligibility of one month imposed on two international-level athletes whose ADVRs involved the use of cocaine. We are not suggesting that the two international-level athletes received preferential treatment or that there is anything amiss in the sanctions. We merely refer to these cases for comparative purposes. We also acknowledge that it is not an equal comparison, as the SADR allows for a different sanction in respect of cocaine use.
54. In November last year the Tribunal issued a decision in respect of Mr Bracewell, a former international cricket player (see *Sport Integrity Commission v Bracewell* – ST04/24). And, just last week (27 June 2025), the Tribunal also issued a decision in respect of Mr Lepper, an international squash player (see *Sport Integrity Commission v Lepper* – ST04/25). In each case the use of cocaine was deliberate and, having previously received anti-doping education, each undoubtedly knew that it was a prohibited substance, and that using cocaine was also a criminal offence. Cocaine, of course, is not something that an athlete could obtain on prescription through an online GP.
55. In contrast, Ms X is only a Recreational Athlete (an amateur female boxer) who had not previously received any meaningful anti-doping education. She obtained Duromine, a legitimate weight-loss medication, through an online GP. She did not know, and neither was there any reason for her to know, that it contained the prohibited substance Phentermine. Her use of Duromine was for weight-loss and health reasons, rather than for enhancing sport performance.

56. At issue in respect of each athlete was whether the use of the prohibited substance occurred out-of-competition in a context unrelated to sport performance. It is implicit in the agreed sanctions that the Commission accepted that that was the position in respect of Mr Bracewell and Mr Lepper, but no such concession was made in respect of Ms X. Instead, those issues fell to be determined by the Tribunal, where she had the burden of establishing both matters on the balance of probabilities.
57. When it comes to sanction, cocaine and phentermine are both non-specified substances prohibited in-competition only, under S6.A: Non-Specified Stimulants of the 2024 or 2025 WADA Prohibited List.
58. Cocaine though is also classified as a Substance of Abuse but rather than that additional feature being treated as an aggravating factor, given that cocaine's status as a non-specified stimulant remained unchanged, under the SADR it is treated as a mitigating factor leading to a substantial reduction in the potential sanction. So, if an Athlete who has used cocaine can establish that the use occurred out-of-competition and was unrelated to sport performance, the period of ineligibility comes down from two years to three months, which can be further reduced to one month if the Athlete completes a Substance of Abuse Treatment Programme.
59. The rationale for introducing the Substances of Abuse category is laid out at SADR r 4.2.3 and acknowledges that these substances are "frequently abused in society outside of the context of sport".
60. While an erroneous observation, in New Zealand using cocaine happens to be a criminal offence. It is a Class A controlled drug under the Misuse of Drugs Act 1975, alongside other drugs such as methamphetamine, heroin and LSD, with its classification reflecting that it poses a very high risk of harm to individuals or society. It is curious then, at least in the New Zealand context, how committing a criminal offence, that is, using cocaine, could justify a reduction in sanction, especially as it risks the perception of condoning criminal conduct. It could also signal to any athlete contemplating using a banned stimulant that it would be wise to choose one that is also a substance of abuse.
61. From the Tribunal's standpoint, to reduce the sanction for using cocaine from two years down to one month because it is "frequently abused in society outside of the context of sport", while Ms X's sanction remains at two years, involving as it does the use of

stimulants which are in the same category (S6.A: Non-Specified Stimulants of the WADA Prohibited List) as cocaine, seems perverse.

62. A casual onlooker, unversed in the intricacies of the SADR, comparing the facts and the sanction imposed on a Recreational Athlete with the facts and the sanctions imposed on the two International-Level athletes, might well conclude that there has been unequal treatment here and that something has gone terribly wrong.
63. The Tribunal regards a two-year sanction for Ms X as being disproportionate to her level of culpability and by way of comparison, it does not sit at all well with the one-month sanctions imposed in the two cocaine cases, just discussed.
64. Had the SADR permitted a reduction in sanction at the level sought by Mr Nicholls for Ms X's admission of the violations, it would have gone at least some way towards achieving a fairer outcome.

#### **Publication of Name**

65. Under r 14.3.7 the mandatory Public Disclosure required under r. 14.3.2 is not required in relation to a Recreational Athlete. As to whether such discretion should be exercised in favour of Ms X who is a Recreational Athlete, there are several factors that support such a course.
66. First, as just discussed, is our view that the sanction itself is disproportionate to her level of fault. Second the publishing of her name could amount to an additional punishment given that it is over a year ago since Ms X was tested. We expect it has been a very long and anxious wait. It might have also been costly. Finally, we also bear in mind that we have found that she did not know that Duromine contained the prohibited substance Phentermine and that her use occurred out-of-competition and was unrelated to sport performance.
67. For those reasons we have chosen not to publish her name. That will be accompanied by any necessary redactions.

#### **Orders**

68. The Tribunal **orders** as follows:
  - (i) A period of ineligibility from participation in any capacity in a competition or activity organised, sanctioned, or authorised by any sporting

organisation that is a signatory to the SADR, of two years is imposed on Ms X under Rule 10.2.1, backdated to commence on 21 February 2025 (the date of provisional suspension order).

- (ii) This means Ms X is ineligible to participate in competitive sports until 21 February 2027.
- (iii) In accordance with r 14.3.7 the Tribunal chooses not to publish Ms X's name or any identifying features, for the reasons set out in paragraph 67 above.
- (iv) This determination should be the final determination by the Tribunal in this matter, and it may be published (with the required redactions) in the usual way.

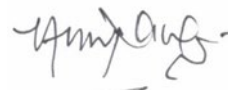
Dated: 2 July 2025



**John Macdonald**  
Chair



**Dr Sarah Beable**  
Panel Member



**Harete Hipango**  
Panel Member