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Sports Tribunal finds Triathlete not at fault for testing positive to morphine

Graham O'Grady, a triathlon competitor, tested positive to the prohibited substance morphine as the result of an in-competition test on 8 January 2011 when he won the Tauranga Half Ironman / NZ champs. Triathlon New Zealand brought an application for his provisional suspension to the Sports Tribunal and the Tribunal provisionally suspended him on 18 February 2011. Drug Free Sport New Zealand subsequently brought anti-doping rule violation proceedings against Mr O'Grady to the Tribunal.

Mr O'Grady did not challenge the positive test result which had been confirmed by A and B sample tests. However, he claimed he was not at fault in testing positive to morphine as the morphine found in his system was due to poppy seeds contained in loaves of gluten free poppy seed bread he had been eating before, and on the day of, the competition.

In order to establish a defence of "no fault" under Rule 14.5.1 of the Sports Anti-Doping Rules, the athlete must show by persuasive evidence:

- How the prohibited substance came into his or her system and
- That he or she bears no fault, which requires the athlete to establish that in the circumstances he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had used or been administered the prohibited substance.

The Tribunal heard and accepted expert scientific evidence that morphine may be produced from consumption of poppy seeds (which are not prohibited substances). Poppy seeds are a potential, if not certain, source of morphine. The concentration of morphine that may result from consumption of poppy seeds is subject to many variables. There was some evidence that the variables involved in the present case, including the source of poppy seeds and the bread production process, may in combination have inflated the morphine concentration. The Tribunal accepted that on the scientific evidence the morphine concentration in Mr O'Grady's test samples was a "possible" or "likely" consequence of the consumption of poppy seed bread.

While the scientific evidence established the possibility of the contamination arising from the poppy seed consumption, the Tribunal still had to be satisfied, on a balance of probabilities that the source of the morphine concentration was more likely than not the consumption of poppy seeds and, if so satisfied, that Mr O'Grady could not reasonably have known or suspected that outcome.

Having heard and seen Mr O'Grady and the other witnesses, the Tribunal was satisfied that the source of Mr O'Grady's positive test was the consumption of the poppy seed bread. On the evidence there was no other credible explanation.

The Tribunal then had to decide whether Mr O'Grady could reasonably have known or suspected that consuming a commercial bread product might introduce morphine into his

system and ultimately result in the positive test. The Tribunal decided that this result could not reasonably have been anticipated by Mr O'Grady.

As the Tribunal concluded that there was no fault on the part of Mr O'Grady for the anti-doping violation, no penalty of suspension was imposed and the provisional suspension order lapsed.

However, as an anti-doping violation had been established, the Sports Anti-Doping Rules required that his competition result on 8 January had to be disqualified. Such disqualification is an automatic consequence of an anti-doping violation under the Rules, even when an athlete is found to have no fault for the violation.

The Tribunal emphasised that, in its experience, this was a very unusual case.

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 Graham O'Grady* (ST 01/11). Copies of the decision 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).