

INTERNATIONAL TENNIS FEDERATION

and

LAURA POUS TIO

Decision of the Independent Anti-Doping Tribunal

Charles Flint QC, Chairman

Dr Joseph Cummiskey

Dr. Mario Zorzoli

Date of Decision: 25 January 2008

DECISION

1. The tribunal has been appointed under Article K of the ITF's Tennis Anti-Doping Programme 2007 ("the Rules") to hear a charge brought against Laura Pous Tio ("the player") of a doping offence contrary to article C.1 that prohibited substances (Hydrochlorothiazide and Amiloride) had been found to be present in a urine specimen taken from the player on 19 June 2007 at the Wimbledon Championship Qualifiers event held at Roehampton.
2. In this case the player has waived her right to an oral hearing under Article K1.3. She has submitted written representations dated 11 October 2007 from Joseph Riba of Fermin Morales, attaching a statement from Dr. Tomas Benedicto of the Instituto Javier de Benito.
3. The commission of the doping offence under Article C1 is admitted. The player seeks a mitigation of the penalty under Articles M5.1 or M5.2.

4. The facts are not in dispute. The ITF does not challenge the player's explanation for the presence of the prohibited substances in her body, namely that they were derived from the use of the medication Ameride, which had been prescribed by Dr. Neus Tomas Benedicto in June 2007 for the reasons set out in her statement.

5. The player's case is that she did not intentionally commit the doping offence. She had been under the treatment of Dr. Benedicto since July 2006. Ameride was prescribed for therapeutic purposes but the player did not appreciate and was not advised that it contained a prohibited substance. She has never tested positive before and has always shown special care and attention in complying with the anti-doping programme. It is argued that she would have been granted a therapeutic use exemption if she had applied, but she did not appreciate Ameride contained a prohibited substance.

6. The player is a graduate of Medicine and Surgery from the University of Barcelona, with a master's degree in Nutrition and Food Science. She is a member of the medical team at the Instituto Javier de Benito. It should be noted that the player did not take any advice from her medical practitioner or from the ITF, or from any official or coach, as to whether the medication that she was taking might place her in breach of the WADA Code. Nor did she review the list of prohibited substances, nor consult the wallet card issued to players nor telephone the ITF hotline for advice.

7. The tribunal notes that the explanations advanced for the prescription of Ameride given in letters dated 26 September and 11 October 2007 from Joseph Riba on behalf of the player are not consistent. In the first letter it is stated that the prescription was a diuretic to treat liquid retention in the knee and a weight problem. In the second it is stated that the player was exhibiting pre-menstrual symptoms, oedemas and hypertension. It also notes that Dr. Benedicto is a specialist in nutrition and aesthetic medicine.

8. One her case the player did not any steps to ascertain whether or not her medication might cause her to infringe the anti-doping rules. On the anti-doping control form signed by her on 19 June 2007 she incorrectly declared that she was taking no medication. It was only after she received the letter dated 12 September informing her of the positive test that she asked Dr. Benedicto for an explanation and was informed that Ameride contained the prohibited substances, Hydrochlorothiazide and Amiloride.

The Doping Offence

9. As stated above the player does not dispute that she committed a doping offence under Article C.1 on the basis that a prohibited substance was present in the specimen taken.
10. The doping offence is established, and it follows that the player is automatically disqualified from the Wimbledon Championship Qualifiers and forfeits any ranking points and prize money obtained in that competition.

Sanctions

Exceptional Circumstances

11. The player contends that in the circumstances of this case she bears no fault, or no significant fault, for the offence, and thus the period of ineligibility which would otherwise apply should be eliminated or reduced under Articles M.5.1 or M.5.2.
12. The relevant part of Articles M.5.1 and M.5.2 read as follows:

M.5.1

“If a Player establishes in an individual case involving a Doping Offence under Article C.1 that he or she bears No Fault or Negligence for the offence, then the otherwise applicable period of Ineligibility shall be eliminated. the Player must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated.”

M.5.2

“If a Player establishes in an individual case involving such offences that he or she bears No Significant Fault or Negligence for the offence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than than one-half of the minimum period of Ineligibility otherwise applicable. the Player must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.”

13. The relevant terms are defined as follows:

No Fault or Negligence The Player establishing that 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 ...

No Significant Fault or Negligence. The Player establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No fault or Negligence was not significant in relation to the Doping offence.

14. In this case the player is able to establish how the prohibited substance entered her system and has therefore satisfied the precondition for the application of the relevant provision.
15. Articles M.5.1 and M.5.2 require consideration of the player’s moral fault, judged against the necessarily strict standards set by the Rules applying the WADA Code. M.5.1 refers to the “exercise of utmost caution”. The player has

a personal responsibility, from which she cannot be absolved by reliance on others. Article B4 provides that it is the sole responsibility of each player to acquaint himself with all the provisions of the Rules. Any player has a clear duty to check whether any medication being taken by him, of which only he is aware, is permitted under the anti-doping rules. It is fundamental to the strict liability anti-doping regime that a player is responsible for any prohibited substance found to be present in his body and that ignorance of the rules or of the nature of any substance administered or ingested can be no defence.

16. The duty of utmost caution imposed on athletes is reiterated in the Advisory Opinion of CAS (CAS 2005 /C/976 & 986) at paragraphs 73 – 75. The tribunal has also noted the decision of CAS in *WADA v. Lund* (CAS OG 06/001) particularly at paragraph 4.11. It is clear that a player who is taking medication has a continuing duty to check properly whether that medication is permitted under the anti-doping rules.
17. If the player fails to meet the high duty of care he may be regarded as having borne some fault, but it may not be “significant”. That word in its context connotes a lack of serious or substantial moral fault or blameworthiness, so that the rigorous application of these very strict anti-doping rules is tempered in the case of an excusable and understandable failure to have foreseen or prevented the doping offence where the conduct of the player was not culpable, but failed to meet the standard of utmost caution. However the circumstances have to be truly exceptional so as to prevent the principle of strict liability being eroded.
18. In the circumstances of this case the player clearly failed to comply with the duty of utmost caution, or to exercise any reasonable level of care to comply with the anti-doping programme. She did not give any consideration to whether the prescription medicine might contain a prohibited substance, by checking the constituents of Ameride against the prohibited list, which is

available on the internet. She did not make any enquiry of her medical practitioner, nor ask her to check the position by reference to the ITF wallet card. She could not reasonably expect her medical practitioner, who is not a specialist in sports medicine, to warn her that Ameride contained prohibited substances. She failed to take advantage of the telephone advice line offered by the ITF. She did not make any enquiry of her national federation or her national anti-doping organisation. In summary she failed to take any steps at all to check whether her medication infringed the anti-doping rules.

19. She failed to declare the medication on the anti-doping control form. This is particularly surprising for a player who herself has a medical qualification and therefore could be expected to be very familiar with the rules and the need to check carefully whether any medication contains prohibited substances.

20. It is not relevant to this issue whether the player might have been granted a therapeutic use exemption if she had taken proper steps to check all her current medication against the prohibited list from time to time. However the tribunal does not accept that it is established that an exemption would have been granted for Ameride for two reasons. Firstly there are other alternative treatments available. Secondly on the limited evidence produced the diagnosis of hypertension and the need for treatment have not been properly established, taking into account the published WADA requirements for Medical Information to support the decisions of Therapeutic Use Committees.

Sanctions to be applied in this case

21. For those reasons we decline to reduce the mandatory period of ineligibility under Articles M.5.1 or M.5.2. The mandatory period of 2 years' ineligibility must take effect.

22. Under Article M.8.3 the period of Ineligibility is to start on 1 October 2007 being the date from which the player should be treated as having voluntarily withdrawn from competition.

23. Article M.7 provides:

In addition to the automatic Disqualification all other competitive results obtained from the date a positive Sample was collected through to the date of commencement of any Ineligibility period shall, unless the Anti-doping Tribunal determines that fairness requires otherwise, be Disqualified with all the resulting consequences, including forfeiture of any medals, titles, computer ranking points and prize money (without deduction for tax).

24. Although there is no evidence of potential performance enhancement we do not consider that fairness requires that the player be not disqualified from any event subsequent to the Wimbledon Championship Qualifiers. There are no special circumstances in this case which would justify relief from the consequences prescribed by the rules.

25. Accordingly the player should be disqualified from all events, singles and doubles, in which she competed between 19 June and 1 October 2007.

Decision

26. For the reasons given above, the tribunal unanimously makes the following decision:

- (i) A doping offence contrary to Article C.1 has been established;
- (ii) Under Article L.1 the player is automatically disqualified in respect of the Wimbledon Championship Qualifiers, and forfeits

any computer ranking points and prize money obtained in that competition;

- (iii) Under Article M.2 the period of ineligibility to be imposed is 2 years;
- (iv) Under Article M.8.3 the period of ineligibility shall commence on 1 October 2007;
- (v) Under Article M.7 the player shall be disqualified from any events in which she competed between 19 June and 1 October 2007 and forfeits any computer ranking points and prize money obtained in that competition

Charles Flint QC

Dr. Joseph Cummiskey

Dr. Mario Zorzoli

A handwritten signature in black ink that reads "Charles Flint." The signature is written in a cursive style and is underlined with a single horizontal stroke.

signed on behalf of the Tribunal in London on 25 January 2008