

INTERNATIONAL TENNIS FEDERATION

TENNIS ANTI-DOPING PROGRAMME

DECISION IN THE CASE OF COURTNEY NAGLE

1. Admission of Doping Offence

1.1 Ms Nagle has acknowledged that Canrenone was present in the sample provided by her on 28 July 2008 at the Nordic Light event in Stockholm, Sweden. She has therefore admitted her commission of a Doping Offence under Article C.1 of the Programme.

1.2 This is Ms Nagle's first doping offence.

2. Application of Article M.4 of the 2009 Programme (Specified Substances)

2.1 The primary sanction for an offence under Article C.1 of the Programme that is a first doping offence is a two-year period of Ineligibility (see Article M.2). However, discretion exists under various provisions of the Programme – copied from the World Anti-Doping Code (“Code”) – to reduce that sanction in particular circumstances, including where the substance in question is a “specified substance”.

2.2 Canrenone is not classified as a “specified substance” in the 2008 List of Prohibited Substances and Prohibited Methods, but it is so classified in the 2009 List. Therefore, applying the principle of *lex mitior*, as mandated by Article 25 of the 2009 Code and Article A.6.2 of the 2009 Programme, and in accordance with the decision of the independent anti-doping tribunal in *ITF v. Volandri* (15 January 2009), Ms Nagle is entitled to invoke Article M.4 of the 2009 Programme (the equivalent of Article 10.4 of the 2009 Code) in her cause. Thus, if she can establish how the diuretic got into her system and that her use of the diuretic “was not intended to enhance the Player's sports performance or mask the Use of a performance-enhancing substance”, discretion exists to depart from the two-year period of Ineligibility specified in Article M.2 and to impose instead a sanction of between (at a minimum) a warning and reprimand and (at a maximum) a period of Ineligibility of 24 months.

2.3 Ms Nagle has explained the presence of Canrenone in her system was due to her therapeutic use of spironolactone to treat a medical condition. She has produced medical records confirming the diagnosis and the prescription of spironolactone to treat that condition in 2004, with further prescriptions in 2005 and 2006. She explains that she had a ‘flare up’ of her condition in the summer of 2008, started taking the spironolactone again on 2 July 2008, and stopped on 2 September 2008, after the condition improved.

2.4 Ms Nagle explained that she was not aware the medication prescribed to her contained any prohibited substance. She says she took the medication only for therapeutic purposes and not to enhance her performance or to mask the use of any other substance, and notes that she declared the medication on her doping control form when she provided her sample on 29 July 2008.

2.4 On this basis, and in accordance with the comments to Article 10.4 of the 2009 Code, Ms Nagle has established to the required standard(s), and with the required corroborating evidence, how the Canrenone got into her body, and that her use of the Canrenone “*was not intended to enhance the Player’s sports performance or mask the Use of a performance-enhancing substance*”. Therefore, discretion exists under Article M.4 of the Programme to reduce her period of Ineligibility down from the 24 months mandated by Article M.2.

3. Exercise of Discretion under Article M.4

3.1 According to Article 10.4 of the Code (and Article M.4 of the Programme), the criterion to be used in exercising that discretion is the “degree of fault” of the player. On that issue:

3.1.1 Ms Nagle’s fault in this case was significant:

3.1.1.1 Article B.3 of the 2008 Programme states as follows:

It is the sole responsibility of each Player:

B.3.1 to acquaint him/herself, and to ensure that each Person from whom he/she takes advice (including medical personnel) is acquainted, with all of the requirements of the Programme;

B.3.2 to know what constitutes a Doping Offence under this Programme and what substances and methods have been included in the Prohibited List; and

B.3.3 to ensure that anything he/she ingests or uses, as well as any medical treatment he/she receives, does not give rise to a Doping Offence under this Programme.

3.1.1.2 This is a very strict responsibility on all players, which is fundamental to the fight against doping and to the pursuit of clean competition in the sport of tennis. In the words of the CAS Panel in *Pous Tio v. ITF* (CAS 2008/A/1488, 22 August 2008), it requires players to ‘*investigate to their fullest extent that the medication does not contain prohibited substances.*’

3.1.1.3 Ms Nagle failed to take various steps that were available to her to discharge her strict personal responsibility to ensure that the medical treatment she received did not involve substances that are prohibited under the Programme. She did not use the ITF wallet card, she did not call the ITF telephone advice line, and she did not contact her National Association or USADA. Pleading ignorance about these matters, and about the resources available to help her, is insufficient.

3.1.2.4 Ms Nagle has stated: ‘*Generally when seeing a doctor and being prescribed a new medication I would ask the doctor if it is a legal substance for a professional athlete to be taking. ... Specifically with regard to spironolactone, I was originally prescribed it for my condition in 2004 November and informed my doctor I was an athlete.*’ This is clearly not adequate, especially since she apparently did not consult a sports medicine

specialist. She should have made sure that the doctor she consulted understood the strict anti-doping rules to which she was subject, and should have specifically drawn the doctor's attention to the list of prohibited substances and asked if the medication proposed contained any of the substances on that list.

3.1.2 Nevertheless, it is accepted that at least:

3.1.2.1 Ms Nagle did obtain the Canrenone from a doctor, who prescribed it in good faith to treat a legitimate medical condition. This can be contrasted with cases where athletes take pills, supplements and other 'medications' without prescription or other proper medical advice. Ms Nagle was not completely reckless, as are the athletes in the latter cases.

3.1.2.2 Ms Nagle had used the same medication previously, in 2004, in 2005, and again in 2006, without any concern or objection being raised by anyone (albeit that the ITF is not aware of any testing being done on her in that period).

3.1.2.3 Ms Nagle did at least declare the medication she was taking on the Doping Control Form that she filled out when she provided her sample in July 2008.

3.1.3 Furthermore, notice is taken of the fact that an athlete who knowingly and intentionally takes a prohibited substance such as a steroid or hormone, specifically for the purpose of enhancing his/her sports performance, will still only be banned for two years under the 2009 WADA Code (and the 2009 Programme), unless '*aggravating circumstances*' can be established (see Article 10.6 of the 2009 Code and Article M.6 of the 2009 Programme). Ms Nagle's case is clearly not as serious as that.

3.2 As a consequence, the imposition of a period of Ineligibility in this case of less than two years is appropriate. In the case of *Pous Tio* (23 December 2008), involving similar facts to the current case, the ITF reduced the period of Ineligibility to be served by the player by six months, from 24 months to 18 months. Ms Nagle's fault was not (quite) as great as that of Ms Pous Tio, and therefore considers that the period of Ineligibility imposed on Ms Nagle should be sixteen (16) months.

4. Back-dating

4.1 In accordance with 2009 WADA Code Article 10.9.2, Article M.9.3(b) of the 2009 Programme provides that where a player promptly admits a doping offence after being confronted with it by the responsible Anti-Doping Organisation, the period of Ineligibility imposed may be back-dated so that it is deemed to have commenced as far back as the date of sample collection, provided that after such back-dating the player still has to serve at least one-half of the period of Ineligibility imposed. Following the principle of *lex mitior*, that Article is potentially applicable in this case.

4.2 Unlike Ms Pous Tio, who took her case to an independent anti-doping tribunal and then CAS, Ms Nagle has promptly admitted her doping offence on being confronted with it by the ITF. This means that the case can be dealt with in a resource-efficient manner.

4.3 Therefore, Ms Nagle is entitled to the benefit of this new rule. Since her sample was collected on 29 July 2008, back-dating her 16-month ban to start on that date would mean it would end at midnight on 28 November 2009. Since that would mean that as of today she still had more than 50% of her 16 month ban still to serve, such back-dating is permitted under Article M.9.3(b).

5. Decision

5.1 Based on the foregoing, Ms Nagle acknowledges that she has committed a Doping Offence under Article C.1 of the Programme and accepts the following consequences (the “**Decision**”):

5.1.1 A sixteen-month period of Ineligibility, backdated to commence on 29 July 2008 and therefore ending at midnight on 28 November 2009.

5.1.2 Disqualification of her results achieved in the following events, including the forfeiture of the ranking points and prize money awarded therein:

<u>Event (Doubles)</u>	<u>WTA Ranking Points</u>	<u>Prize Money</u>
Nordic Light	2	\$295

5.2 Ms Nagle has waived her right, under Article O of the Programme, to appeal against the Decision, both as to the finding that she has committed a Doping Offence and as to the imposition of the Consequences listed above.

Stuart Miller
Head of Science & Technical

29 March 2009