

DECISION OF THE WORLD CURLING FEDERATION CASE HEARING PANEL

Dated March 6, 2012

In respect of the following

Adverse Analytical Finding: Case n. 2011/1102

Athlete /NF: James P. (Jim) Armstrong - Canadian Curling Federation - CANADA

Event: Out of Competition

Sample Collection Date: 08 December 2011

Prohibited Substance: Tamoxifen

1. COMPOSITION OF WORLD CURLING FEDERATION (WCF) CASE HEARING PANEL

Lorenza Mel (Chair)

Michele Verroken

Dr. Peter Jenoure

2. SUMMARY OF THE PROCEEDINGS

2.1 Written Submission provided by the Athlete:

The WCF Case Hearing Panel took into consideration all evidence and documents presented in the case file by the WCF, as also made available by and to the Athlete.

2.2 Additional laboratory data requested by the Hearing Panel (IRMS analysis and laboratory opinion on level of Tamoxifen and IRMS analysis).

2.3 Oral Hearing: by teleconference call (recorded by the WCF (Colin Grahamslaw) as an agreed observer to the Hearing)

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

3.1 **The Athlete:** Mr. James P.(Jim) Armstrong.

3.2 Articles of the Statutes/Regulations which are applicable or have been infringed:

WCF Anti –Doping Rules effective 2009, revised December 2010, art. 2.
World Anti-Doping Code 2009 as adopted by World Curling Federation.

3.3 **Justification for sanction:**

Art. 2.1.1 WCF Anti - Doping Rules: *“It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the Athlete’s part be demonstrated in order to establish an anti-doping violation under art. 2.1”. (Strict liability principle).*

Art. 4.1 WCF Anti - Doping Rules: “*These anti-doping Rules incorporate the Prohibited List which is published and revised by WADA as described in Article 4.1. of the Code. WCF will make the current prohibited List available to each Member Association, and each Member Association shall ensure that the current Prohibited List is available to its members and constituents.*”

4. SUMMARY OF FACTS

4.1 Background

4.1.1 Mr. James P.(Jim) Armstrong (the Athlete) is a 61 years old retired dentist, who has been involved in curling all his life. Initially he was an able bodied competitive curler; however a car accident in 2004 forced him to retire early from his professional career and ended his involvement in able bodied curling. In 2007 Mr. Armstrong took up Wheelchair Curling. Currently Mr. Armstrong is an elite curler, member and captain of the Canadian Team since 2007, with recent World Championship and Paralympic gold medals. As such Mr. Armstrong has been drug tested numerous times during his curling career with no previous adverse findings.

4.1.2 The Athlete describes his medical condition (confirmed by statements made by Dr. Linda Ferguson and Dr. Robert Graham) as presently requiring daily pharmacological treatments for cardiovascular disease, spinal stenosis, arthritis, diabetes, hyperlipidemia, as well as chronic pain syndrome. WCF confirmed that Mr. Armstrong has applied for and been granted approval for Therapeutic Use Exemptions for those medications that contain prohibited substances.

Adverse Analytical Finding

4.1.3 On 8 December 2011 Mr. Armstrong was selected for an Out Competition test authorized by the WCF. Analysis of urine sample no. A2629856 taken from the Athlete was performed at the *Laboratoire de controle du dopage* (LAD), a WADA accredited laboratory in Montreal. The analysis revealed the presence of **Tamoxifen** (Certificate of Analysis dated 22 December 2011).

4.1.4 Tamoxifen is listed in category **S4.2 HORMONE ANTAGONISTS AND MODULATORS** of the WADA Prohibited List of 2011. This Prohibited List came into effect on January 2011. As a hormone antagonist and modulator, in particular a selective estrogen receptor modulator (SERMs), Tamoxifen is prohibited both in competition and out of competition. The presence of Tamoxifen in the Athlete’s sample therefore constitutes an Anti- Doping Rule Violation. Mr. Armstrong was officially notified of this Adverse Analytical Finding by the WCF Anti-Doping Administrator on 6th January 2012.

4.2 Results Management

4.2.1 With the WCF notification letter of 6 January 2012, the Athlete received notice that he was entitled to the performance of the B-Sample confirmatory analysis of his sample. The Athlete was also informed of his right to be present at the B-Sample opening and analysis within the time period prescribed in the International Standard

for Laboratories. The Athlete waived his right to have the B- Sample confirmatory analysis performed in his letter to WCF of 12 January 2012.

- 4.2.2 The Case Hearing Panel was appointed on 27th January 2012 with the additional guidance from the Chair of the WCF Doping Hearing Panel that the Secretary General of WCF had pointed out ‘this is an urgent matter’, the decision of the Case Hearing Panel is needed prior to the beginning of the World Wheelchair Curling Championship in Korea which begins February 18 2012. Mr. Armstrong is selected to compete for Canada.
- 4.2.3 The Athlete was not provisionally suspended. On 17 January 2012, he requested, and was granted, the opportunity to be heard at a Hearing before an Independent Panel of WCF.

4.3 Jurisdiction

- 4.3.1 The WCF Case Hearing Panel has jurisdiction over this matter pursuant to the WCF Anti-Doping rules.

4.4. Further Evidence Provided by Athlete

- 4.4.1 On 16 January 2012 the Athlete submitted a written explanation ‘*to provide some insight into how this unfortunate incident occurred*’. He strongly denied having knowingly taken a prohibited substance which would jeopardise his second chance to compete in curling. Upon receipt of the notice of AAF, the Athlete expressed surprise about the positive result and researched Tamoxifen to determine why it would be a banned substance. In his explanation the Athlete noted the potential side effects of Tamoxifen and explained that ‘*the drug’s potential side effects put him at more medical risk than he already is*’. This is the main reason why he strongly denies taking Tamoxifen.
- 4.4.2 Mr. Armstrong offered a possible explanation as to how he came into contact with Tamoxifen. He explained that his wife of thirty years, Carleen, was diagnosed with Stage 4 breast cancer in 2006. One of the many treatments used was Tamoxifen, which was kept in the same ensuite as Mr. Armstrong’s own (ten) prescription medications, together with countless health supplements and ‘over the counter medications used by his wife.
- 4.4.3 Mr. Armstrong’s wife died of breast cancer in 2009. Although there had been discussion about moving from the family home before her death, it was her wish to remain there for the last months of her life. The house was finally sold in May 2011 and Mr. Armstrong moved from the West Coast to Ontario but placed many of his possessions in storage. He put some 50 bottles of prescription medications in the same box, including those belonging to his wife. Mistakenly this also included his extra supplies of prescription medications. Initially he obtained further supplies of his prescription medications in Vancouver.
- 4.4.4 The stored medications arrived at his new home on September 7 2011; however the imminent start of the international curling season left little time for him to unpack all the boxes. He did find the box containing the medications but had little time to deal with vetting and disposing of the other medications. A new physician in Ontario

prescribed all his medications, so Mr. Armstrong stated he had no immediate need to even deal with the supplemental medications that were shipped.

4.4.5 Mr. Armstrong further explained that as he became short of medications he would go to the older medications stored in a drawer. As time and initiative permitted, he would casually purge the medications (Carleen's health supplements, her OTC medications and the prescription medications belonging to Mr. Armstrong and to his wife). Mr. Armstrong asked the Panel to note that of all the ten prescription medications he presently takes (Spironolactone is the exception), he has taken them for at least six years. He is very aware of the size, shape and colour of every one of them. He does point out that Tamoxifen and ASA 81mg are virtually identical in size, shape, colour and texture. Mr. Armstrong also explained that most of his prescriptions were provided in a three month supply and in large pill containers (Metformin, Tramacet, Metoprolol and ASA 81 mg, for example), all with tamper-proof lids. This caused him some problems during his travels due to their size and inconvenience to pack, and especially difficulty with opening the bottles on a daily basis due to his arthritic hands. For this reason routinely he would seek alternative, secondary smaller bottles to make the opening of his medications easier and more convenient.

4.4.6 To explain the occurrence of the positive result, Mr Armstrong said "*there is no other possible rationale for my exposure to Tamoxefin (sic), other than unwittingly contaminating one of my medications, most likely ASA 81 mg, with an old medication bottle of my deceased wife*". By his own admission, his decision to put his pills in smaller bottles, using some old medicine small bottle of his wife, could have led to the involuntary contamination with some residue of or his consumption of medications prescribed to his wife Carleen. The Athlete claims that this is the only possible way Tamoxifen entered his body. In support of his explanation and emphasis on the medical rationale Mr. Armstrong submitted a statement from Dr. Linda Ferguson of Colchester Sport Medicine Clinic – Truro - Nova Scotia. She confirmed her belief in his explanation, and of the circumstances that led to the defensive explanation of contamination of his medications.

4.5 Further Evidence Requested by the Hearing Panel

4.5.1 On 31 January 2012 the Case Hearing Panel formally asked the Athlete to provide them with the following additional evidences, documents and declarations by 5 February 2012:

- 1) Copies of his wife's prescription for Tamoxifen;
- 2) Declaration of the date of his wife's death;
- 3) Evidence of the presentation of Tamoxifen pharmaceutical (as bottle size photos);
- 4) Some evidence of his move;
- 5) Clarifications on the relationship with Dr. Ferguson;
- 6) Name and contact details of his doctor;
- 7) An independent medical opinion on the potential danger of use of Tamoxifen by someone with his medical conditions;

4.5.2 On 31 January 2012 the Case Hearing Panel formally asked WCF to provide the following additional evidences, documents and declarations by 5 February 2012:

- 1) Full analysis report issued by the Canadian Laboratory's with graphics;
- 2) A declaration from LAD's analyst about the quantification of the prohibited substance found in the sample with an indication if the quantity found could be compatible either with consumption or a contamination of another substance.
- 3) Evidence attesting that Mr. Armstrong requested TUEs on a regular basis, and for what pharmacological substances;
- 4) Copy of the clean personal record of Mr. Armstrong for doping issues considering all his previous negative tests or similar document.
- 5) Details (date, place, mandate) of previous AD controls on the Athlete Mr. Armstrong;

4.5.3 On 3 February 2012 the Athlete provided the Hearing Panel with all documents, evidences and declarations requested except the no.1. The Athlete explained that prescriptions for his wife are turned in to the B.C. Cancer Agency. Due to a stringent Privacy Act in Canada, it would be difficult, maybe impossible, to get any certificate from his wife's Oncologist in a short time. Pictures of Tamoxifen bottle sizes and ASA 81 bottle sizes downloaded from Internet were provided. The Athlete provided evidence of his move and clarified his relationship with Dr. Ferguson who is the Team Physician for the National Program in Canada. Dr Ferguson added to her previous statement:

*February 2, 2012
Re: Dr. James P. Armstrong*

Dear Ms. Mel,

After further review of Dr. Armstrong's adverse analytical finding of Tamoxifen, I wanted to provide the panel with facts that confirm Dr. Armstong (sic, Armstrong) did not take Tamoxifen with the intent of performance enhancement or to mask underlying anabolic steroid abuse.

As stated in my previous letter, Tamoxifen abuse in sport occurs when an athlete takes cycles of anabolic steroids. When exogenous steroids are Injected or ingested, the male body shuts down its endogenous testosterone and androgen production. During the two weeks off the steroid cycle, the athlete's estrogen to testosterone ratios increase and the athlete may lose muscle mass, develop increased breast tissue and fluid retention. Tamoxifen is used during this off cycle for its anti-estrogen properties which specifically include reduction of breast tissue and fluid retention and prevent loss of muscle mass.

If Dr. Armstong (sic, Armstrong) had been abusing Tamoxifen in this setting, his serial, regular urine doping tests would have detected androgenic steroids and metabolites as he would have been on cycle. None of his samples showed evidence of steroid abuse which begs the question of why would he then intentionally ingest Tamoxifen for off cycle benefits?

Close review of the facts reveal the truth that Dr. Armstrong inadvertently ingested his wife's Tamoxifen. Ironically, the positive doping test alerted him to the fact that he had ingested a drug that could have serious adverse events given his medical history and list of medications. Precautions have been made to prevent such a drug error in the future.

Please take these facts into account when reviewing Dr. Armstrong's case (sic, Armstrong's).

Sincerely,

Linda M. Ferguson BSc,MD,CCFP,FCFP, DipSportMed

- 4.5.4 On 3 February 2012 WCF provided the Case Hearing Panel with TUEs Certificates and Test Record of the Athlete. These documents show that that Athlete had requested and been granted TUEs on a regular basis, none for Tamoxifen. Records show that until his recent test on 8 December 2011, all AAF's were covered by issued TUEs.
- 4.5.5 On February 5 2012 WCF provided the Hearing Panel with the complete Analytical Report received from the LAD and all information regarding the quantity of Tamoxifen found in the sample. The LAD advised that the level of the Tamoxifen metabolite was roughly estimated at 20ng/mL. In response to further questions from the Panel, the LAD informed the Panel on the "*slightly elevate T/E value (although less than 4) and level of testosterone in the sample*", considering the prohibited substance found, suggested further investigations with GC-C-IRMS test on sample A to clarify the T/E ratio. On February 7, the Case Hearing Panel informed the Athlete and WCF that additional information to clarify the T/E ratio in urine sample A would be sought. The WCF and Athlete were advised that the A sample would be retested using GC.C.IRMS as per art. 6.5 of WCF AD rules; the Athlete declared no objection to the additional analysis. Article 6.5 of the WCF Anti-Doping Rules (retesting samples) states: "***A Sample may be reanalyzed for the purposes described in Article 6.2 at any time exclusively at the direction of WCF or WADA. The circumstances and conditions for retesting Samples shall conform with the requirements of the International Standard for Laboratories.***"
- 4.5.6 As the Athlete was due to depart for the 2012 World Championship in Korea, arrangements for the Hearing were finalized. The Case Hearing Panel notified both the WCF and the Athlete of the presumptive date for the Hearing: Friday, 17th February at 4. pm (Central Europe Time). No objection was received about waiting for the result of the IRMS test before the Hearing took place.
- 4.5.7 During the evening of February 16, the LAD provided the Case Hearing Panel with the additional info requested and the result of IRMS analysis. The LAD informed the Panel that the IRMS results were consistent for testosterone itself and all its metabolites, with endogenous origin. To answer the questions related to other substances present in the athlete's sample the LAD detected the presence of metoprolol and metabolites, and tramadol. Regarding the level of Tamoxifen found in the sample, the LAD confirmed that from the A sample analysis, the level of Tamoxifen metabolite was roughly estimated at 20ng/mL (Tamoxifen not being a threshold substance the LAD does not pretend to have a quantitative assay); the peak abundance was compared to the positive control sample. That being stated, the opinion of the LAD was that 20ng/mL cannot be described as a trace which fits more with 1 to 5 ng/mL and lower, i.e. pg/mL.

5.0 The Hearing

- 5.1 The Hearing by teleconference call took place on February 17 2012 at 4pm CET as scheduled. Present on the Hearing teleconference in addition to the Case Hearing Panel, the athlete, his representative, Dr. Linda Ferguson, and as an observer, Mr. Colin Grahamslaw WCF (in charge of recording the discussion).
- 5.2 The hearing was conducted in a fair manner with the opportunity for the athlete to present evidence (including the right to call and to question witnesses), to address the Case Hearing Panel, and to present his case. During the Hearing, the Athlete confirmed the content of his submissions and responded to all questions posed by Case Hearing Panel members. Dr. Ferguson as well confirmed her declaration of support for the Athlete's defense explanations.
- 5.3 Mr. Armstrong contended that the only explanation of his exposure to Tamoxifen was from a residual amount in a container he had re-used. He added he had no formal way of cleaning or labelling containers, and that the labelling of the medications was not particularly legible. Despite his previous position as a qualified dentist, Mr. Armstrong testified that he had no formal training on drug information. In response to questions about realizing the health consequences of the use of Tamoxifen, Mr. Armstrong admitted that following the report of an Adverse Analytical Finding, he had not sought medical examination to check if there had been any damage to his health as identified in his explanation. He had consulted Dr. Ferguson (who resided some distance away) who advised him to consult his own physician if he noticed any of the side effects, including weight gain. Mr. Armstrong also admitted that he had not retained any of the containers he had used to repack his medications and had not undertaken to arrange analysis of his medications to determine whether contamination or confusion of medications had taken place. Mr. Armstrong stated that about 3 weeks after hearing of the Adverse Analytical Finding he had destroyed the containers and their contents.
- 5.4 At the end of the hearing the Athlete did not exclude the possibility of an accidental ingestion of Tamoxifen, due to his decision to put his pills inside an old small Tamoxifen bottles belonging to his deceased wife.
- 5.5 The Panel invited Mr. Armstrong and his representative to make any final submissions to the Case Hearing Panel before retiring to consider their decision. Dr. Ferguson invited the Panel to show utmost understanding of Mr. Armstrong's circumstances that had led to the Anti-Doping Rule Violation.

6.0 The Decision

- 6.1 The WCF Case Hearing Panel was satisfied that the laboratory reports relating to the A-Sample and sample collection documentation confirmed that the analytical tests were performed in a proper manner and that the findings of the LAD are accurate. The WCF Case Hearing Panel was satisfied that the A- Sample test results show the presence of the Prohibited Substance, Tamoxifen in contravention of Article 2.1 of the WCF Anti-Doping Rules (December 2010).
- 6.2 The Athlete did not request the B-Sample Analysis be performed, and did not contest the accuracy of the testing methods or the test results and positive findings. The WCF

Doping Hearing Panel has thus sufficiently proven the objective elements of a doping offence pursuant to WCF Anti-Doping Rules Article 2.1.1.

- 6.3 Pursuant to WCF Anti-Doping Rules Article 10.2, the mandatory period for a first breach of the WCF Anti-Doping Rules is a period of two years' ineligibility. However, depending on the circumstances of the specific case, a reduction or even an elimination of this period of ineligibility is possible under the conditions of WCF Anti-Doping Rules Article 10.4 and 10.5.
- 6.4 The Panel agreed that WCF Anti-Doping Rules, Article 10.4 would be generally applicable to this case, since, Tamoxifen is classified as a Specified Substance according to the following: Article 4.2.2 of WADA Code which introduces some flexibility when determining a sanction for an athlete that has ingested a Specified Substance.

WADA Code Article 4.2.2 establishes that: *“For purposes of the application of Article 10 (Sanctions on Individuals) all prohibited substances shall be “specified substances” except substances in the class of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances”.*

Further in the WADA 2011 Prohibited List – International Standard (effective from 1 January 2011), Tamoxifen is a prohibited substance listed in category **S4.2** (selective estrogen receptor modulator (SERMs). In the preamble of “the 2011 Prohibited List International Standard” – valid 1 January 2011, it is stated that: *“All prohibited substances shall be considered as “Specified Substances” except Substances in classes S1, S2.1 to S2.5, S.4.4 and S6.a, and Prohibited methods M1, M2 and M3”.* The Panel further agreed that Tamoxifen could be considered a “Specified Substance” because it is listed in S4.2 and not in S.4.4 and S6.a.

The commentary to Article 10.4 of the WADA Code explains why Specified Substances are treated differently to other Prohibited Substances:

“..there is a greater likelihood that Specified Substances, as opposed to other Prohibited Substances , could be susceptible to a credible, non-doping explanation.”

- 6.5 However in order to prove his entitlement to any reduction of the period of ineligibility under Article 10.4 of the WCF Anti-Doping Rules, the Athlete must establish:
- a. how the Specified Substance entered his body
 - b. that such Specified Substance was not intended to enhance his sport performance or to mask the use of a performance-enhancing substance.
- 6.6 As noted by the Panel in CAS 2010/A/2229 WADA v FIVB & Berrios, in respect of the first condition, the commentary to article 10.4 of the WADA Code provides that *“the Athlete may establish how the Specified Substance entered the body by a balance of probability”.* “In other words, a panel should simply find the explanation of an Athlete about the presence of a Specified Substance more probable than not”.
- 6.7 With regard to the second condition, a panel must be *“comfortably satisfied by the objective circumstances of the case that the Athlete in taking or possession a Prohibited Substance did not intend to enhance his or her sport performance”* or to mask the use of a performance enhancing substance.

- 6.8 To justify any elimination or reduction under WCF Anti-Doping Rules Article 10.4, the Athlete must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the WCF Doping Hearing Panel that he or she ingested the specified substance unknowingly e.g. by means of ingesting a contaminated product.

How the Specified Substance entered Mr. Armstrong's Body

- 6.9 With respect to the question of how the prohibited substance Tamoxifen entered Mr. Armstrong's body, the Case Hearing Panel considered the Athlete's explanations about his possible accidental or involuntary consumption of Tamoxifen. The Panel was concerned about the lack of clarity of the Athlete's explanations. On the one hand Mr. Armstrong suggested he had accidentally placed his own medication in a bottle which had previously contained Tamoxifen (for reasons explained as ease of access and transportability). The Panel considered whether this suggested contamination would explain the Adverse Analytical Finding. On the other hand Mr. Armstrong may have confused the medications in containers due to the similar appearance of ASA 81 and Tamoxifen. The Panel considered whether this suggested involuntary consumption would explain the AAF. The possibility that medications may be confused in this way should be of serious concern to the medical and pharmaceutical professions and steps taken to avoid such confusion and potential harm to consumers.
- 6.10 The Panel considers it unfortunate that it has not been possible to prove whether the finding is the result of contamination or direct consumption of Tamoxifen which might provide corroborating evidence of the unknowing administration of the prohibited substance. However the guidance of the laboratory regarding the level of Tamoxifen detected is instructive and suggests this finding has not arisen from a simple contamination but from an ingestion of the substance:

"The level of tamoxifen metabolite was roughly estimated at 20 ng/mL. Tamoxifen not being a threshold substance, we do not pretend to have a quantitative assay; the peak abundance was compared to the positive control sample. That being stated, 20 ng/mL cannot be described as a trace which fits more with 1 to 5 ng/mL and lower, i.e. pg/mL."

- 6.11 The WCF Case Hearing Panel accepts on a "balance of probability" that the Tamoxifen medication prescribed for Mr. Armstrong's wife (receiving Tamoxifen as a treatment for breast cancer) is the probable source of the prohibited substance consumed by the Athlete. Consequently the WCF Doping Hearing Panel accepts that the Athlete has established the source of the Prohibited Substance found in his body. The Panel has directed reservations about the clarity of this explanation to considerations of the degree of fault of the Athlete.

Intention to Enhance Performance

- 6.12 The WCF Doping Hearing Panel now has to determine whether the Athlete has established that the use of the Specified Substance was not intended to enhance his sport performance. In this context, the WCF Doping Hearing Panel refers to the letters from the Athlete of 12th, 16th January 2012 and 2 February 2012, in which he explains that he never had any intention to enhance his sporting performance or to use of a performance enhancing product. The Case Panel notes that clause two of WADA Code Article 10.4 requires that:

“the Athlete...must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance”

- 6.13 The Case Hearing Panel noted that the evidence provided by the Athlete of his own medical condition and the adverse consequences of use of Tamoxifen, which has been independently certified by two doctors (Dr. Linda Ferguson and Dr. Robert Graham), strongly suggests Tamoxifen use would be dangerous to Mr. Armstrong. In both certifications, the Doctors have advised that the Athlete suffered two myocardial infarctions, has congestive heart failure, hypertension, hyperlipidemia, peripheral vascular disease, non-insulin dependent diabetes, spinal stenosis, two knee arthroplasties, advanced osteoarthritis in all joints, bilateral rotator cuff tendonopathy and chronic pain syndrome. In the opinion of Dr. Graham there is *“no plausible reason as to why he would abuse Tamoxifen as, if anything, it would cause his present medical conditions to worsen”*, and also: *“The specific adverse effects of Tamoxifen - could put Dr. Armstrong’s health at great risk”*.
- 6.14 Whilst it could be argued that the athletes who misuse prohibited substances do so without regard to the health risks and that in Mr. Armstrong’s case the danger to his already seriously damaged health would be severe, the Panel acknowledges it has no objective evidence from the available information that Mr. Armstrong had any intention to dope. The fact that Mr. Armstrong, by his own admission, did not consult a doctor after discovering his consumption of Tamoxifen suggests he was not worried by the health consequences described in such detail by the Doctors’ statements. It is well known that Tamoxifen may be used to stimulate the endogenous production of testosterone, a hormone which contributes to the improvement of strength through the increase of muscle mass. Endogenous production of testosterone in a man decreases with age, with consequent loss of muscle mass. Hence the Panel exercised caution by pursuing the laboratory report of a slightly elevated level of T/E (although less than the reporting threshold of 4) and the level of testosterone detected. The results from this single set of data do not provide evidence of intent to enhance performance.
- 6.15 Taking into account the notion of intent to enhance performance, the opinion of the doctors and the evidence provided by the LAD regarding the result of the IRMS which found that testosterone and its metabolites were of endogenous origin, together with the Athlete’s access to Tamoxifen, the WCF Case Hearing Panel accepts that the Athlete has established, in accordance with WCF Anti-Doping Rules Art. 10.4, the absence of intent to enhance his sport performance or to use a performance-enhancing substance. Ingestion of Tamoxifen in conjunction with the general physical condition, as described by the Athlete and his medical advisers, could have placed him at possible risk to his health.

Degree of Fault

- 6.16 The WCF Case Hearing Panel considers that the prerequisites of WCF Anti-Doping Rules Article 10.4 regarding justification or reduction of the sanction are fulfilled in this case. Consequently the Case Hearing Panel now moves to consider the Athlete’s degree of fault as the criterion for assessing any reduction of the period of ineligibility. Articles 10.4 and 10.5 of the WCF Anti-Doping Rules set out clearly the consideration of circumstances which must be specific and relevant to explain the Athlete’s departure from the expected standard of behavior. It is noted in the commentary to WCF Article 10.5 that the intention of the WCF Anti-Doping Rules

(and WADA Code) is to have impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

- 6.17 In deciding the sanction, the WCF Case Hearing Panel considered whether the nature and degree of Mr. Armstrong's conduct under the circumstances was such that it would be appropriate and proportionate, taking into account other similar cases, to apply a two year period of Ineligibility. The Panel considered the specific and relevant circumstances of this case. WCF's Anti-Doping Rules provide for the possible reduction or elimination of the period of Ineligibility in the unique circumstance where the Athlete can establish that he or she had No Fault or Negligence, or No Significant Fault or Negligence, in connection with the violation.
- 6.18 The first consideration made by the Case Hearing Panel concerning the Athlete's degree of fault of negligence in respect of an Athlete's duty of care to comply with the Anti-Doping Rules, was based on opinions expressed by other CAS panels:

“No fault» means that the athlete has fully complied with the duty of care. [...] «No significant fault» means that the athlete has not fully complied with his or her duties of care. The sanctioning body has to determine the reasons which prevented the athlete in a particular situation from complying with his or her duty of care. For this purpose, the sanctioning body has to evaluate the specific and individual circumstances. However, only if the circumstances indicate that the departure of the athlete from the required conduct under the duty of utmost care was not significant, the sanctioning body may [...] depart from the standard sanction”
(CAS 2005/C/976 & 986; CAS 2007/A/1370 & 1376).

- 6.19 The WCF Case Hearing Panel is of the opinion that as a health professional and as an elite athlete, Mr. Armstrong should have exercised far greater caution in his access to medications that may be prohibited in his sport. Tamoxifen is a potent anti-cancer drug and as such should be stored securely to avoid accidental administration. During the hearing, Mr. Armstrong denied having formal training in drug information; however he did admit that he prescribed medications to his patients. The Panel considered that during his professional career as a dentist, Mr. Armstrong has regularly prescribed medications, as a medical professional he would be aware of the care needed to store and manage drugs. Even if he is correct in his statement regarding his training, the patient information leaflet that must accompany prescribed medications would warn of the dangers of the potency of Tamoxifen.
- 6.20 As an elite athlete of many years, competing in his sport at international level including Paralympic Games, Mr. Armstrong has a duty to be informed of the anti-doping regulations. He has participated in many doping control tests and has submitted Therapeutic Use Exemptions. Mr. Armstrong should have been aware of the risk of exposure to a prohibited substance such as Tamoxifen.
- 6.21 The Panel found that Mr. Armstrong was wholly negligent in storing, re packaging and reusing medicine containers with or without their contents (in this case Tamoxifen), particularly containers of drugs prescribed for another person. In the circumstances described by the Athlete, the containers were kept for over two years after the death of his wife. Notwithstanding the emotional and logistical pressures the Athlete has described as applying to him, the recycling of medicine containers is not a practice tolerated in pharmacy. To not know if the containers still contained

any tablets, particularly when the Athlete is subject to the anti-doping rules, does not demonstrate responsibility for ensuring anti-doping rules would not be violated.

- 6.22 Further as an elite athlete, Mr. Armstrong has the responsibility to exercise a duty of care and ensure he is avoiding contamination with a prohibited substance. Even if the Athlete has established how Tamoxifen entered his system and that he did not intend to enhance his sport performance, his level of fault is significant because he departed from the standard of care expected of athletes, to ensure that he did not ingest a prohibited substance. Hence the WCF Case Hearing Panel is the opinion that Mr. Armstrong's behavior should be considered absolutely unacceptable and unjustifiable.
- 6.23 The facts presented to the Case Hearing Panel do not suggest that the Athlete exercised the slightest caution in his exposure to a prohibited substance. Even if the Athlete's explanation that his own medication was contaminated by his storage of this medication in a Tamoxifen bottle was plausible, it is at best significantly negligent. The Panel prefers the theory that Mr. Armstrong may actually have administered Tamoxifen in place of his own medication of similar appearance. Mr. Armstrong has admitted to the practice of poor labelling and cleaning of the containers he used. The Panel is not convinced that in this case the level of Tamoxifen detected is compatible with a simple contamination but as a residue of an ingestion of the substance. The Anti-Doping rules are clear in respect that Athletes are responsible for what they ingest (Article 2.1.1).
- 6.24 Despite the tragic circumstances described by the Athlete, he has created an unjustifiable risk of contamination or ingestion of a prohibited substance. Even if there was no intent to enhance performance, Mr. Armstrong has not met his obligations as an elite athlete of several years. He clearly has access to medical advice and could have investigated those risks earlier. Given the advice he has submitted about the health risks, it is reasonable to assume that his doctors would have advised him of those risks.
- 6.25 Under the circumstances, the Panel concludes that the sanction could not be completely eliminated and debated at length the application of the full two years suspension. However in acknowledging that no evidence of intent or actual enhancement of performance exists from the single set of data presented, the Panel considers it would be proportionate to reduce the sanction from the maximum of two years but to apply a sanction longer than a reduction to one year.
- 6.26 In CAS 2009/A/2012 Doping Authority Netherlands v N (and in reference to CAS 2005/A/847 and CAS 2005/A/830) the Panel considered *...that a mere 'uncomfortable feeling' alone that a one year penalty is not the appropriate sanction cannot justify a reduction. The individual circumstances of each case must always hold sway in determining possible reduction. Nevertheless the implementation of the principle of proportionality as given in the World Anti-Doping Code closes more than ever before the door to reducing fixed sanctions. Therefore the principle of proportionality would apply if the award were to constitute an attack on personal rights which was serious and totally disproportionate to the behavior penalized.*"
- 6.27 The Athlete has been seriously negligent, primarily for not knowing that Tamoxifen is a Prohibited Substance, and secondly for not being aware that using old medicine bottles, or storage or sharing his medicine in another medicine bottle represent an unjustifiable high risk of possible contamination or ingestion of prohibited

substances. All above said it seems that an elimination or a significant reduction of sanction ex Art. 10.5.1 (No Fault or Negligence) and Art. 10.5.2 (No Significant Fault or Negligence) are not applicable to this case.

- 6.28 The WCF Case Hearing Panel has tried to balance on the one hand, the Anti-Doping Rule Violation and the Athlete's serious negligence with regard to his obligations as top level athlete. On the other hand, and in mitigation, the WCF Case Hearing Panel considered the fact that the Athlete has established by a *balance of probability* the source of the Prohibited Substance, the absence of the intent to cheat or enhance sport performance, the Athlete's prior clean record and his correct behavior requesting TUEs, always granted, is relevant.
- 6.29 Despite this, the WCF Case Hearing Panel is of the opinion that Athlete's "*degree of fault*" should be considered relevant in determining whether his period of ineligibility should be reduced. Whether the Athlete was seriously negligent in "putting his daily pills inside old bottle of Tamoxifen and sharing medicine bottles", is only relevant to his "*degree of fault*" not his "intent to enhance sports performance". The WCF Case Hearing Panel cannot exclude the fact of a possibly accidental and careless ingestion, due to sharing bottles of medicine or with other medicines taken by storing them in an old pill container which previously held Tamoxifen, intended for another member of his family.
- 6.30 The WCF Case Hearing Panel is of the opinion that the Athlete has made a serious mistake that he could have avoided. The range of penalties available for first time offenders such as the Athlete who have committed an Anti-Doping Rule Violation in connection to the presence of a Specified Substance, from an Out of Competition testing is, at a minimum, a reprimand and no period of Ineligibility, and at maximum, two years of Ineligibility. Consequently a small reduction of 6 months under the circumstances is justifiable, and recognizes that the Athlete is at significant fault in the Anti-Doping Rule Violation.

6.1 Disqualification

Not applicable in Out of Competition testing.

6.2 Sanction

In view of the expedited nature of the hearing, the Panel issued the following Summary Decision after the Hearing

SUMMARY DECISION

**IN THE MATTER OF ALLEGED DOPING OFFENCE BY
Mr. JIM ARMSTRONG (CANADA)**

Contrary to WCF Anti-Doping Regulation 2.1.1

Following the expedited hearing held on 17th February 2012, on behalf of the World Curling Federation, the Independent Panel are unanimous in their view that Mr. Armstrong has committed an Anti-Doping Rule Violation and that this constitutes a

Doping Offence under ADR Article 2.1. The Panel confirms that the sanction applicable in this case should be 18 months suspension from the date of this decision.

This summary decision will be followed by a full written decision at the earliest opportunity in accordance with the WCF Hearing Procedure.

CONFIRMED FINAL DECISION

As a consequence of the foregoing, the WCF Case Hearing Panel has decided to impose the following sanction on the Athlete, in accordance with WCF Anti -Doping Rule Article 10. The Athlete shall be suspended for a period of 18 (Eighteen) months to be effective immediately and without further notice from the date of the date of the notification of the summary decision.

6.3 Right of Appeal

Right to Appeal: as per Art. 13.4 of WCF Doping Hearing Procedure and Art. 13 of WCF Anti-Doping Rules this decision (involving an International Level Athlete) may be appealed exclusively to CAS in accordance with the provisions applicable before such court and in the time established by the WCF Anti-Doping rules;

7.0 DECISION TO BE FORWARDED TO:


7.1 The person sanctioned: Yes

7.2 The President of the NF of the person sanctioned: Yes

7.3 Any other: WADA

The WCF Case Hearing Panel

Avv. Lorenza Mel (Chair).....



Mrs. Michele Verroken.....



Dr. Peter Jenoure.....

