



## **Decision**

by

the FIBA Disciplinary Panel established in accordance with  
Article 8.1 of the  
FIBA Internal Regulations governing Anti-Doping  
in the matter

**Yamene Jave Coleman**  
**(born 19 April 1986)**

hereafter:

**(“the Player”)**

(Nationality: U.S.A.)

**Whereas**, the Player underwent an out-of-competition doping test organised by the National Anti-Doping Agency of Romania (“ROM NADO”) on 14 September 2010 in Bucharest, Romania (sample no. 1941614);

**Whereas**, the analysis of the Player's sample was conducted at the WADA-accredited Laboratory in Bucharest, Romania (“Laboratory”), which informed the ROM NADO on 23 September 2010 that the analysis showed the presence of the prohibited substance Hydrochlorothiazide in the Player’s sample.

**Whereas**, by letter dated 12 October 2010 the Player explained his position regarding the adverse analytical finding, stating that he had used medication for hypertension. The Player also submitted medical documentation from doctors in Romania and USA in support of his statement and waived his right to have the B sample analysed. On the same day the Player submitted a request for a retroactive TUE for hydrochlorothiazide;

**Whereas**, on 12 October 2010 the ROM NADO “Hearing Commission for athletes and their support personnel who violated the anti-doping rules” (“Commission”) imposed a provisional suspension on the Player pending the decision of the ROM NADO’s Therapeutic Use Exemption Committee (“ROM NADO TUEC”);

**Whereas**, some time between 12 and 27 October 2010 the ROM NADO TUEC issued its decision granting the requested TUE to the Player; the decision bears a date of 14 September 2010;

**Whereas**, on 27 October 2010 the Commission decided, based on the “retroactive TUE granted” and the Player’s medical condition, to eliminate the provisional suspension and to sanction the Player with “a reprimand and no period of Ineligibility from future events”;

**Whereas**, by letter dated 14 January 2011 FIBA informed the Player that the FIBA Disciplinary Panel would decide whether and to what extent a sanction should be imposed upon the Player for the purposes of FIBA competitions. In the same letter, the Player was informed about his right to be heard either in person (in which case a hearing at FIBA’s headquarters in Geneva would have to be organised) or via telephone conference on 26 January 2011;

**Whereas**, on 17 January 2011 the Player through his coach contacted FIBA and requested a postponement of the hearing due to the team playing a game on the same date and time as the scheduled telephone conference;

**Whereas**, on 21 January 2011 FIBA informed the Player that the hearing was rescheduled for 3 February 2011;

**Whereas**, on 3 February 2011 the Player – assisted by his team doctor Dr. Bachner Istvan and his agent Mr. Andrei Olteanu – was heard via telephone conference by a FIBA Disciplinary Panel composed of Dr. Wolfgang Hilgert, member of FIBA's Legal Commission and of Dr. Heinz Günter, President of FIBA's Medical Commission; Ms. Virginie Alberto, FIBA Anti-Doping Officer, Mr. Amir Ibrahim, FIBA Anti-Doping Assistant, Mr. Benjamin Cohen, FIBA Legal Affairs Manager as well as Mr. Andreas Zagklis, FIBA Legal Advisor, were in attendance;

**Whereas**, in his written statement and at the hearing the Player:

- did not contest the result of the test;
- stated that in 2008 he was diagnosed with a hereditary medical condition – from which also his mother and grandmother suffer – that causes hypertension and requires permanent treatment with medication which contains hydrochlorothiazide;
- submitted that 3-4 days after his arrival in Romania on 31 August 2010 he visited with the team doctor Dr. Istcan Bachner (“Dr. Bachner”) and showed to him the bottle of medication he has been using; Dr. Bachner advised him to have his medical file sent from USA;
- stated that the medical file arrived in Romania towards the end of September, after the Player had been submitted to the out-of-competition doping control;
- submitted that until the end of the 2009-2010 season he was still playing basketball at university level (NCAA) without ever having failed an anti-drug test and that in Romania he had his first experience as a professional basketball player;
- argued that he was not aware that his pills contained a prohibited substance;
- affirmed that during the period of his provisional suspension (12-27 October 2010) he had not participated in any competitions;
- asserted that this was his first anti-doping rule violation;

Now, therefore, the Panel takes the following:

## DECISION

**A period of one (1) month's ineligibility is imposed on Mr. Yamene Jave Coleman. Considering the period of provisional suspension already served (15 days) he shall remain ineligible from 9 February 2011 to 23 February 2011.**

### Reasons:

1. Article 2.1 of the FIBA ADR reads as follows:

*“ARTICLE 2 ANTI-DOPING RULE VIOLATIONS*

*Players and other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.*

*The following constitute anti-doping rule violations:*

*2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample.*

*2.1.1 It is each Player's personal duty to ensure that no Prohibited Substance enters his or her body. Players 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 Player's part be demonstrated in order to establish an anti-doping violation under Article 2.1. [...]*”

2. The Panel shall first examine whether the Player has committed an anti-doping rule violation. In accordance with Article 13.7 of the FIBA Internal Regulations governing Anti-Doping (“FIBA ADR”) the Panel's mission is to “decide whether and to what extent a sanction shall be

imposed for the purposes of FIBA Competitions on a Person sanctioned or provisionally suspended by a national member federation”. In addition, Article 4.4.2 of the FIBA ADR provides that “FIBA may decide, following appropriate review, whether and to what extent a TUE granted by another ADO should be recognized for the purposes of FIBA Competitions.”

3. In this respect, the Panel notes that the Player’s TUE application was filed with the ROM NADO on 12 October 2010 and does not contain a request for retroactive effect. Next to the field “Intended duration of treatment” Dr. Bachner and the Player completed the word “PERMANENT”. Further, at no point of the proceedings before FIBA did the Player or his representatives make reference to a retroactive TUE or to circumstances (urgent treatment, lack of time to submit a TUE etc) which would justify a retroactive TUE. Indeed, the Player was clear that his condition is chronic and the treatment has not changed in the last three years, while Dr. Bachner expressly stated that he “did not ask for a retroactive TUE”. The Panel is therefore unable to understand why the ROM NADO TUEC decision bears a date of 14 September 2010 –date of the Player’s doping control– without further explanations and why the Commission referred in its decision to a “retroactive TUE”. Without any intention to intervene in the medical evaluation of the file by the ROM NADO TUEC, the Panel decides that such TUE cannot have any legal effect on the determination of whether the Player committed an anti-doping rule violation or not. It shall be taken into account only when examining the Player’s degree of fault, as per the applicable rules.
4. The Panel thus finds that the Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA FIBA ADR since Hydrochlorothiazide, a prohibited specified substance listed in WADA's 2010 Prohibited List (the “2010 Prohibited List”) under letter S.5 (Diuretics and Other Masking Agents) was found in his urine sample. This fact remained uncontested in the proceedings.
5. According to Article 10.2 of the FIBA ADR

*“The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), [...] shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:*

*First violation: Two (2) years' Ineligibility.”*

6. According to Article 10.4 of the FIBA ADR:

*“Where a Player or other Person can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the Player’s sport performance or mask the use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:*

*First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.*

*To justify any elimination or reduction, the Player or other Person 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 or mask the use of a performance enhancing substance. The Players or other Person’s degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.”*

7. In view of the fact that:

- the Player is responsible for the substance found in his body and he should have made sure that a proper TUE was granted to him prior to joining a FIBA club;
- the Player’s medical condition and respective treatment with the substance Hydrochlorothiazide is established through a series of medical reports by doctors in the USA and in Romania and also through the ROM NADO TUEC decision;
- at the time of the doping control the Player was in the process of gathering his medical file from USA upon recommendation of Dr. Bachner in order to request a TUE;

- the Player had not participated in any competitions before the doping control, which was conducted as part of the process to obtain a license in Romania, and he was simply preparing with the team for the upcoming season;
- the Player noted on the doping control form that he was taking “blood presion medicine ” (sic);
- the Player had no intention to enhance his performance;

the Panel decides that it is appropriate to impose on the Player a sanction of one (1) month. The Panel emphasizes that it reached the above conclusions on the basis of very particular circumstances as evidenced, and without therefore intending to give any direction whatsoever for future cases.

8. The Panel deems it appropriate pursuant to Article 10.9.3 of the FIBA ADR that the period of ineligibility shall start on the date of this decision and that the Player shall receive credit for the period of provisional suspension (from 12 to 27 October 2010) served by him.
9. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached “Notice about Appeals Procedure”.

Geneva, 9 February 2011

On behalf of the FIBA Disciplinary Panel

Dr. Wolfgang Hilgert  
President of the Disciplinary Panel