



Decision

by

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

Sean McDonough Daniel
(born 4 May 1989)

hereafter:
(“the Player”)

(Nationality: Israel)

Whereas, the Player underwent an in-competition doping test on 14 November 2012 in Bonn, Germany, after the end of the game Telekom Baskets Bonn vs Hapoel Holon held in the framework of the 2012-13 EuroChallenge Men;

Whereas, the analysis of the Player's sample (No. 2694588) was conducted at the WADA-accredited Laboratory in Seibersdorf, Austria (“Laboratory”). On 27 November 2012 the Laboratory informed FIBA through ADAMS that the analysis of the Player’s sample showed the presence of “*the stimulant methylphenidate and [of] a metabolite*”;

Whereas, on 28 November 2012 FIBA informed the Player of the adverse analytical finding and of his right to request the analysis of bottle B from his sample;

Whereas, on 11 December 2012, the Player informed FIBA that neither he nor his club Hapoel Holon had received FIBA's communication of 28 November 2012. By email of the same day, FIBA extended the time limit for a reply until 14 December 2012;

Whereas, on 13 December 2012, the Player's father requested "one more week to make our decision about the future action";

Whereas, on 20 December 2012, FIBA wrote to the Player a) with respect to the B sample analysis, that a final extension until 21 December 2012 was granted, and b) with respect to the organisation of a hearing, that he was invited until 4 January 2013 to inform FIBA whether he wished to exercise his right to be heard in person (in which case a meeting at the FIBA Headquarters in Geneva would be organised) or by telephone conference on Tuesday, 8 January 2013 at 3:00 pm (Geneva time);

Whereas, on 24 December 2012, the Player through his legal counsel waived his right to have the bottle B analysed and requested to be heard by the FIBA Disciplinary Panel via telephone conference on either 17 or 21 January 2013;

Whereas, on 7 January 2013, FIBA informed the Player that his request for a postponement of the hearing was allowed and that the hearing would be organised on Thursday, 17 January 2013 at 10:00 am (Geneva time);

Whereas, on 9 January 2013, the Player through his legal counsel requested another postponement of the hearing since the time fixed by FIBA "was not possible" for the Player's side. Subsequently, FIBA informed the parties involved that the hearing would be held on Monday, 21 January 2013 at 3:00 pm (Geneva time);

Whereas, on 20 January 2013, the Player through his legal counsel submitted his position in writing along with supporting documentation;

Whereas, on 21 January 2013, the Player through his legal counsel informed FIBA that *“We need another postponement of the hearing, due to the fact that the player has become ill (has a very high fever), and therefore he is unable to attend the conference call. [...] Our new favorable time is Thursday, January 24th 2013, at either 12:00 or 18:00 (Geneva time).”*

Whereas, on the same day, FIBA wrote to the Player as follows:

“We acknowledge receipt of the letter by Mr. Daniel’s counsel requesting a third postponement of the hearing by telephone conference. Given the circumstances invoked by the player’s counsel, FIBA decides to accept said request. The new hearing date is Monday, 28 January 2013, at 3pm.”

Further, in view of the additional delays in the adjudication process and that already a period of more than two months since the doping control in question has passed, during which the player is participating in competitions, FIBA has decided to make use of its discretion under Article 7.5.2 of the FIBA Internal Regulations governing Anti-Doping (FIBA IR).

*Therefore, FIBA herewith **provisionally suspends with immediate effect the Player from all national and international competitions.***

Please note that, in accordance with Article 10.9.3 of the FIBA IR, if a provisional suspension is imposed and respected by the Player, then the Player shall receive a credit for such period of provisional suspension against any period of ineligibility which may ultimately be imposed.

The Basketball Federation of Israel and FIBA Europe are requested to take all necessary measures for the implementation of the provisional suspension.”

Whereas, on 22 January 2013, the Player through his legal requested FIBA as follows:

“[...] We would like to reconsider the suspension [sic] of the player due to these facts:



The player is currently with his team, preparing for two very important games that are supposed to take place tomorrow [sic] and on Sunday, and suspending him in a sudden way will have a great negative effect both on the player and on the team, as the player is the team's captain.

Due to the fact that the hearing is set for Monday, and since, in our point of view, the player has a good chance to receive only a warning, and due to the negative effect that the suspension will have both on the player and the team, we would kindly request that you will cancel the suspension and wait until after you will hear the player himself.

Due to the decision you received, we would like to re-schedule the hearing for tomorrow at any time that is convenient for you. [...]"

Whereas, on 23 January 2013, FIBA replied to the Player as follows:

"[...] We wish to inform you that the reasons invoked, i.e. important games of the team in the next five days, cannot justify a "cancellation" of the Secretary General's decision of yesterday.

Please be advised that FIBA has endeavoured to timely render a decision in this matter (see also Article 13.3 of the FIBA ADR) as explained in yesterday's letter. This has not been possible due to multiple time extensions on the part of the Player.

For this reason, consistent also with past practice, FIBA maintains its decision to provisionally suspend the Player from all national and international competitions.

The hearing will be conducted by telephone conference on Monday, 28 January 2013, at 3pm. [...]"

Whereas, on 28 January 2013 the Player – assisted by his father, Mr Moti Daniel, and his legal counsel Mr Shimon Hasson – was heard via telephone conference by a FIBA Disciplinary Panel composed of Ms. Eleonora Rangelova, member of FIBA's Legal Commission and of Dr. Heinz Günther, former Chairman of FIBA's Medical Commission. Ms. Virginie Alberto, FIBA Anti-Doping Officer as well as Mr. Andreas Zagklis, FIBA Legal Advisor, were also in attendance;

Whereas, in his submissions the Player stated that:

- he did not contest the result of the analysis;

- he suffers from ADD (Attention Deficit Disorder) since the age of 12 and has been taking the medication Ritalin since the age of 16-17, upon doctor's prescription, in exam periods where concentration for more than 2-3 consecutive hours is required;
- he is a law student at the Academic Center for Law and Business in Ramat Gan and the morning of the day before the game in Germany, i.e. on 13 November 2013, he had to sit an important and long written exam on "Online Crimes". For this reason he took a Ritalin pill before the start of the exam;
- the use of Ritalin has always been – also in this case – connected to his concentration disorder and his studies, not to his sport performance;
- he remembers having disclosed the use of Ritalin to the Doping Control Officer in Bonn, Germany, but unfortunately this was not mentioned on the Doping Control Form. In any event he had no reason to hide the use of Ritalin;
- approximately 23% of all students in Israel use the same medication in exam periods. It is therefore very common and he could have never believed that Ritalin contained a prohibited substance;
- he was not aware that sports regulations prohibit the use of a substance contained in Ritalin. Despite his long experience (since the age of 16) in international competitions, he has not received any anti-doping education except for one session of questions by the Israeli national team before the European U-20 Championships in 2009;
- he did not consult with his team doctor because he thought that the medication had nothing to do with his sports activity;
- he did not intend to gain any advantage by using Ritalin and indeed his performance at the game against Telekom Baskets Bonn was much below his average level of performance, as demonstrated by his statistics;
- he admitted and regretted the use of the prohibited substance and apologised for the mistake to not have requested permission in advance. The news of his anti-doping rule violation have already harmed his reputation as captain of Hapoel Holon and as a player who devotes a lot of time in community service and kid camps;

- he requested a “relatively short” suspension which should last “for only a couple of months”;
- he has not participated in any competitions since the provisional suspension imposed by FIBA;

Whereas, upon the Panel’s request after the hearing, the Player submitted a prescription by his doctor as well as explanations on the comments appearing on the Doping Control Form;

Now, therefore, the Panel takes the following:

DECISION

A period of six (6) months' ineligibility, i.e. from 21 January 2013 to 20 July 2013, is imposed on Mr. Sean McDonough Daniel.

Reasons:

1. Article 2.1 of the FIBA Internal Regulations governing Anti-Doping ("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 Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA ADR since methylphenidate, a prohibited substance listed in WADA's 2012 Prohibited List (the "2012 Prohibited List") under letter S.6.b (Specified Stimulants) was found in his urine sample. This fact remained uncontested.

3. 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."

4. 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."

5. The Panel notes that the Player admitted the violation from the outset. He was straightforward in his submissions to the Panel; in particular the circumstances under which he decided to use Ritalin, *why*, *when* and for *how long* he used it. The Panel has also reviewed the documentation submitted by the Player, including an “Anamnesis Details” from the Ben Ya’akov Institute for Psychological Diagnosis and Consultation, dated 5 June 2002, i.e. when the Player was 13 years old. The diagnosis of learning disorders is compatible with the Player’s version of the facts and with the diagnosis and prescription issued by the neurologist Dr Victor Rozmarin (recording, among others, that the Player has “*been receiving Ritalin for 10 years*”) on 31 October 2012, approximately two weeks before the doping control in question. The Panel has also reviewed a copy of the Player’s law school curriculum and exam schedule, showing that indeed he had to take an exam on the day before the game against Telekom Baskets Bonn in Germany.
6. In addition, the Panel finds it possible that the substance could be detected in the Player’s body approximately 36 hours after the use of Ritalin.
7. The Panel finds on the basis of the above evidence that Article 10.4 of the FIBA ADR is applicable to this case.
8. On the other hand, the Panel finds that the Player, a 23-year professional who has been participating in international basketball competitions since the age of 16 (European U-16, U-18 and U-20 Championships with the national team of Israel) and has had sufficient exposure to basketball outside Israel, was indeed negligent in (a) failing to research the ingredients of the medication in detail, as he – admittedly – did after receiving notice of the violation, or on a website that provides access to official information in accordance with WADA standards, such as FIBA.com; (b) not requesting his club or national federation personnel, be it a physiotherapist or a doctor, for assistance in determining whether he was allowed to consume the medication prior to entering a FIBA competition. FIBA notes that both the Israeli national

teams and Hapoel Holon have extensive experience in international competitions; (c) not having ascertained with finality his medical condition (Dr. Rozmarin speaks of “suspicion of ADD” while the Anamnesis Details from the year 2002 contains a summary of learning “disability finding” and a series of recommendations but no final diagnosis of ADD) to an extent that would allow his club or national team to contact the FIBA Therapeutic Use Exemption Committee and seek permission for the regular use of Ritalin, if such could be granted in this case; (d) considering that he can use a substance commonly used among university students in Israel as if he was any other student with learning disorders, when he knew that he is also a top-level basketball player subject to additional regulations.

9. Therefore, the Panel finds that, although the Player is evidently not a cheater, he failed to comply with the expected standard of behaviour for basketball players set out in the FIBA ADR, since he did not take all the necessary precautionary measures to avoid a prohibited substance entering his body.

10. In view of the circumstances of this case and the Player’s degree of fault, having considered also the award in the matter CAS 2007A/1252 in relation to a student-athlete who uses medication to enhance only his *academic* performance, as well as the Player’s documented concentration disorder in the case at hand, the Panel decides that it is appropriate to impose a sanction of six (6) months on the Player.

11. The Panel deems it appropriate pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on 21 January 2013, i.e. the date of the Player’s provisional suspension by FIBA.

12. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached “Notice about Appeals Procedure”.

Geneva, 1 February 2013

Fédération Internationale
de Basketball



FIBA

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On behalf of the FIBA Disciplinary Panel

Ms. Eleonora Rangelova

President of the Disciplinary Panel