

INTERNATIONAL RUGBY BOARD

IN THE MATTER OF REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **ANDREW HANKS (UNITED STATES OF AMERICA)** CONTRARY TO REGULATION 21

BEFORE A BOARD JUDICIAL COMMITTEE APPOINTED PURSUANT TO REGULATION 21.20 and 21.21 CONSISTING OF:

Judicial Committee:

Gregor Nicholson (Scotland)

Barry O'Driscoll (Ireland)

Graeme Mew (Canada – Chair)

Appearances and Attendances:

For the Board:

Susan Ahern (Counsel)

Tim Ricketts (Anti-Doping Manager)

For the Player

Tom Billups (National Team Head Coach, USA Rugby)

The Player

Andrew Hanks

Heard: 16 February 2006 (by way of telephone conference)

DECISION OF THE JUDICIAL COMMITTEE

1. Finasteride is a drug which, under brand names such as “Propecia” and “Proscar”, is often prescribed by doctors to men to treat male pattern hair loss. The same drug is prescribed to help shrink an enlarged prostate. It has also been concluded that finasteride can be misused as a masking agent for the interpretation of steroid profiles which play an important role in doping control and to complicate or even prevent the detection of 19-norsteroids.
2. Since 1 January 2005, finasteride has been on the prohibited list of the World Anti-Doping Agency (“WADA”), listed under “S5 Diuretics and Other Masking Agents”. As such, it is a “Prohibited Substance” under the anti-doping rules of the International Rugby

Board (the “Board”), which are contained in Regulation 21 of the *Regulations Relating to the Game*.

3. Andrew Hanks (the “Player”) is an up-and-coming 23 year-old American rugby player. He plays rugby for the University of California Golden Bears and is currently in his final year of undergraduate studies. In June 2005, the Player was selected as a member of the USA Sevens squad to compete at the World Games in Duisburg, Germany, in July 2005. This was the Player’s first international selection.

4. The USA Sevens squad assembled in New York in July 2005 to prepare for the World Games tournament. On 17 July, the Player injured his knee in training. Although he subsequently travelled to Germany with the USA squad, he did not, because of injury, play at the World Games.

5. While he has yet to play representative rugby for the USA’s 15-a-side or sevens teams, by virtue of his selection for the World Games, the Player became part of the Registered Testing Pool of International Players subject to out of competition drug testing by the Board.

6. On 8 November 2005, the Player was randomly selected for out of competition testing. He was required to provide a urine specimen to a doping control officer. In the Doping Control Form which he completed, the Player declared that he was using Proscar and daily vitamins.

7. The Player’s urine specimen was divided into “A” and “B” samples and sent to the WADA accredited laboratory in Montreal, Canada. The laboratory’s certificate of analysis of the “A” sample indicated a positive test for the presence of finasteride in the Player’s urine sample.

8. The Board has no record of a Therapeutic Use Exemption (“TUE”) on file for the Player for the use of this substance.

9. Following a preliminary review undertaken pursuant to Regulation 21.20.1, the results of the positive test were subsequently communicated to the Player via USA Rugby and the Player was provisionally suspended effective 28 December 2005.

10. The Player was given the option of having the “B” sample of his specimen analysed, but advised USA Rugby that he acknowledged “that the medication was found” and that he did not wish to have the “B” sample analysed.

11. Letters were written to USA Rugby by Dr. L.G. Hilger (4 January 2006) and by Dr. Warren King, the Medical Director of USA Rugby (10 January 2006). Dr. Hilger wrote that he had been treating the Player for early male pattern hair loss since August 2003 and that he had, at that time, placed him on propecia. The treatment was evidently successful and the Player continued to use the medication, as prescribed by Dr. Hilger. He continued:

I was unaware that propecia (finasteride) was banned, and I believe Andrew was also. The drug was prescribed by me, in good faith, over the last 2 $\frac{1}{3}$ years, at the doses above [1mg daily], for a recognized condition and consistent with FDA indications and dosages. There certainly was no intent by the patient or myself to seek unfair competitive advantage, only a better anterior hairline! The patient ... has discontinued use of finasteride.

12. Dr. King, after outlining the clinical uses of Proscar, expresses the opinion that Proscar would, in fact, block the effects of testosterone on improving performance abilities and notes that as of 1999, Proscar was not banned by either the NCAA (the National Collegiate Athletic Association) or the United States Olympic Committee. He concludes that, having regards to the information available, there is no evidence indicating that there were any performance-enhancing effects of this medication. He goes on to say:

... Andrew Hanks’ use of Proscar does not appear to be based on a desire to enhance performance, but a desire to prevent male pattern baldness. The drug was prescribed by a physician who was ignorant to the fact that the medication

itself was banned by the International Rugby Board. Based on the known metabolic effects of Proscar, it is unlikely that Andrew Hanks' use of Proscar enhanced his athletic ability and offered him an unfair advantage over competitors not using the medication. There is no evidence that Andrew Hanks was knowledgeable that the use of this medication was banned by the International Rugby Board, and there is no evidence that Andrew Hanks attempted to conceal or hide the fact that he was using this agent. In addition, the fact that this agent was not banned by either the International Olympic Committee or the NCAA as recently as 1999 further substantiates its minimal effects regarding performance enhancement.

13. By a letter to the Player (via the Union) dated 26 January 2006, the Player was informed that a Board Judicial Committee (“BJC”) would be appointed to consider his case, that it was proposed that the BJC should meet by way of telephone conference and that he would be given the opportunity to make any submissions and to present any evidence which he believed to be relevant to his case, including any mitigating factors and that he could do so by being present on the conference call and/or by making a written submission in advance.

14. The Player elected to participate in the hearing before the BJC by telephone and was subsequently notified of the hearing details. The National Team Head Coach of USA Rugby also participated in the hearing. In addition to the oral evidence and submissions provided at the hearing, the BJC also considered the documents placed before it, including the following:

- a) Preliminary Review Report
- b) Laboratory Analysis Report
- c) Doping Control Form
- d) Letter from the Player to the Board dated 16 December 2005
- e) Memorandum from USA Rugby to the Board dated 28 December 2005
- f) Email from the Player to USA Rugby dated 12 January 2006
- g) Letter from Dr. L.G. Hilger dated 4 January 2006

- h) Letter from Dr. Warren King dated 10 January 2006
- i) News Release from U.S. Anti-Doping Agency dated 23 January 2006 (“U.S. Bobsled and Skeleton Athlete Accepts Public Warning for Doping Violation”)
- j) *Sports Illustrated* article dated 23 January 2006 (“Lund given doping warning – Skeleton racer will compete in Turin amid suspicion”)
- k) *Sports Illustrated* article dated 23 January 2006 (“Skeleton coach cleared – Nardiello reinstated after suspension is overturned”)
- l) Information relating to Finasteride (Proscar, Propecia)
- m) Synopsis “Investigation about the effects and the detection of finasteride” (http://www.dshs-koeln.de/biochemie/rubriken/00_home/00_fin.pdf)
- n) Bundle of email correspondence between the Board and the Union

15. The hearing was conducted by telephone conference on 16 February 2006.

Subsequent to the hearing the panel requested and received further information from the Board and from USA Rugby concerning the dissemination of certain information relating to the anti-doping programmes of the Board and of USA Rugby.

Anti-Doping Rule Violation Established

16. At the outset of the hearing the Player confirmed his admission that he had used a Prohibited Substance. Accordingly, we are satisfied that the Player has committed an Anti-Doping Rule Violation due to the presence of a Prohibited Substance, namely finasteride, in the Player’s urine sample.

The Player’s Account

17. The Player’s account is a straightforward one.

18. He started playing rugby in high school and has continued playing at university. He takes his rugby seriously and, but for his current provisional suspension, had been looking forward to the University competitive season in the spring of 2006 and to further opportunities to represent his country. He has never previously been drug-tested and had,

prior to this incident, received no anti-doping education from either USA Rugby or from his university. In particular, he had never been provided with a list of banned substances.

19. The Player acknowledged his general awareness that the use of prohibited substances is not tolerated in rugby but he had no idea that finasteride was a banned substance. Nor did the doctor who prescribed finasteride to treat the Player's premature hair loss. The Player was also unaware of the option of applying for a Therapeutic Use Exemption in connection with his use of finasteride for therapeutic purposes.

20. Although he had not been told that he was part of the Registered Testing Pool subject to out of competition testing by the Board, the Player did not, seemingly, have any concerns when he was selected for random drug testing. He disclosed his use of Proscar on the Doping Control Form which he completed at the time he provided his urine sample.

21. The Player said that he had started taking finasteride in August 2003 and had continued doing so until becoming aware of the positive analysis following the drug testing which occurred in November 2005. He has not taken finasteride since then and now understood why it was a banned substance.

The Union's Perspective

22. Tom Billups, the National Team Head Coach for USA Rugby spoke in support of the Player.

23. Until the beginning of 2006, there was no doping information on the website of USA Rugby. During the time frame material to this matter, no information was disseminated by USA Rugby to its territorial unions, teams, clubs, players or player support personnel concerning either doping issues generally or the list of Prohibited Substances in particular.

24. Mr. Billups acknowledged that at the material time, USA Rugby had no formulated system in place to check medication use by national level players to ensure that such use was consistent with USA Rugby's anti-doping policy. While he agreed that this was

regrettable, he felt that the Player's positive test was, in the totality of things, nothing more than a result of a lack of staffing, funding and institutional control by USA Rugby.

25. Mr. Billups noted that the Player had become part of the drug testing pool by virtue of his selection for USA sevens squad for the World Games, but that, as a result of injury, the Player had not, in fact, played at the World Games. While he understood why finasteride is now on the prohibited list, he felt that the serious concerns relating to steroid abuse and cheating stood in contrast to the therapeutic use of a substance for treatment of hair loss. USA Rugby has confirmed that the Player had not, prior to being tested, been informed of his inclusion in the Registered Testing Pool.

26. A review of the website of USA Rugby demonstrates an awareness of and a commitment to the comprehensive anti-doping programme of the Board. For example, a press release dated 21 March 2005 announcing a partnership between the USA Rugby and the Positive Coaching Alliance states:

Aligned with PCA principles and driven by rugby's culture of fair play, USA Rugby boasts one of the most comprehensive anti-doping regulations in American sport, with professionals and amateurs competing in full compliance with the World Anti Doping Agency (WADA) and International Olympic Committee (IOC). Rugby's ethos and tough policies on doping help make it one of the cleanest sports in the world at all levels, a unique attribute among highly professional sports that demand extraordinary strength and stamina. Last summer USA Rugby joined the International Rugby Board (IRB) in adopting a comprehensive anti doping policy to ensure the sport continues to grow and develop in a drug free environment. In 2005 the testing program will be expanded with almost 1,000 anti doping tests conducted by the IRB both in and out of competition.

27. Mr. Billups candidly acknowledged that USA Rugby had failed to get the Player up to speed with current anti-doping regulations. When asked what the position was with respect to participation by US teams in tournaments such as the World Sevens Series, Mr Billups noted that the US currently participates in only three stops on the IRB circuit and

that such a level of participation does not automatically correlate to the provision of educational programmes on anti-doping to the players.

28. Making reference to press clippings relating to the Lund case (which involved an American athlete in the sport of skeleton who had tested positive for finasteride), Mr. Billups noted that, in contrast to Mr. Lund, the Player had not had a long history of exposure to drug testing and information concerning the use of banned substances. As a result, Mr. Billups felt that there had been no fault or negligence on the Player's part.

29. Mr. Billups informed the BJC that, since becoming aware of the Player's positive test, USA Rugby had taken steps to improve player awareness of anti-doping issues through website information and the implementation of a formal anti-doping educational programme. USA Rugby has confirmed that once the website information was posted, the national team players were sent an email informing them of their responsibilities regarding this information.

The Board's Perspective

30. The Board's submissions emphasised the principle of a Player's strict liability for anti-doping violations. The Board's Anti-Doping Manager confirmed that up-to-date doping information was at all material times available on the Board's website and that the Board had sent a circular to all Unions providing information on changes to the 2005 list of Prohibited Substances.

Anti-Doping Rule Violations

31. Any Player at any level of the Game is subject to the anti-doping rules contained in Regulation 21. Under Regulation 21.2.1, the "presence of a Prohibited Substance or its Metabolites or Markers in a Player's bodily Sample" constitutes an anti-doping rule violation.

32. Regulation 21.22.1 provides, in respect of sanctions:

Except for the specified substances identified in Regulation 21.22.2, the period of Ineligibility imposed for a violation of Regulation 21.2.1 (presence of Prohibited

Substance or its Metabolites or Markers), Regulation 21.2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) and Regulation 21.2.6 (Possession of Prohibited Substances and Methods) shall be:

First violation: Two (2) years' Ineligibility.

Second violation: Lifetime Ineligibility.

However, the Player or other Person shall have the opportunity in each case, before a period of Ineligibility is imposed, to establish the basis for eliminating or reducing this sanction as provided in Regulation 21.22.4.

33. It was confirmed that this is the Player's first anti-doping rule violation.

34. Regulation 21.22.4 contains provisions for the elimination or reduction of a period of Ineligibility based on "Exceptional Circumstances".

35. Two categories of exceptional circumstances are identified. In the first, if a Player can establish that he "bears No Fault or Negligence for the violation" and can establish how the Prohibited Substance entered his system, the period of Ineligibility can be eliminated. "No Fault or Negligence" means:

The Player's establishing that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had used or been administered the Prohibited Substance.

36. The second category is where the Player "bears No Significant Fault or Negligence" in which case the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable. The definition of the term provides:

The Player's establishing that his 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 relationship to an antidoping rule violation.

37. A footnote to the corresponding provision of the *WADA Code* makes it clear that only in truly exceptional cases and not in the vast majority of cases will these provisions operate to eliminate or reduce a sanction. An example of where the elimination of a sanction might be justified would be where a Player was sabotaged by a competitor. The administration of a Prohibited Substance by an athlete's personal physician without

disclosure to the athlete, in circumstances where the athlete had told the doctor that he could not be given any Prohibited Substance could, depending on the unique facts and circumstances of a particular case, result in a reduced sanction.¹

Sanctions

38. The anti-doping regimes under Regulation 21 and under the WADA code are based on the principles of personal responsibility and strict liability for the presence of Prohibited Substances or the use of Prohibited Methods. Regulation 21.6 addresses the principle of personal responsibility and provides:

21.6.1 It is each Players responsibility to ensure that no Prohibited Substance is found to be present in his body and that Prohibited Methods are not Used. It is also the personal responsibility of each Player to ensure that he does not commit any other anti-doping rule violation.

21.6.2 It is the sole responsibility of each Player and Person to acquaint himself with all of the provisions of these Anti-Doping Regulations including the Guidelines. It is also each Player's sole responsibility to notify Player Support Personnel, including, but not limited to, their doctors of their obligation not to use Prohibited Substances and Prohibited Methods and to ensure that any medical

¹ The commentary to Article 10.5 of the WADA Code provides:

To illustrate the operation of Article 10.5, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a prohibited substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any prohibited substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.)

treatment received by them does not violate any of the provisions of these Regulations.

21.6.3 Many of the substances in the Prohibited List may appear either alone or as part of a mixture within medications or supplements which may be available with or without a doctor's prescription. Any Player who is concerned about the appropriateness of treatment being administered to him, or medications or supplements being ingested by him, should seek clarification from his doctor or other relevant authority as to whether such treatment is or such medications are prohibited.

39. We accept that the Player did not knowingly commit a doping offence. Use of finasteride over a period of three or more years would be inconsistent with the use of that substance as a masking agent. We also note that finasteride was not a prohibited substance when the Player started taking it. As already noted, finasteride was not included in the WADA prohibited list until 1 January 2005. Although the Board provided information to Unions concerning changes to the WADA prohibited list, this information does not appear to have filtered its way through to the Player and his physician or, for that matter, to Mr. Billups or Dr. King. The Player had never consulted, or thought to consult, the comprehensive anti-doping information available on the Board's website (<http://www.irb.com/Playing/Anti+Doping/>) and the USA Rugby website at the time contained no anti-doping educational information.

40. Unions also have responsibilities under the Regulations. In particular, Regulation 21.14.2 provides that:

Each Union must ensure, (and is responsible for ensuring), that it takes appropriate action to inform each and every one of its members, Players and Persons of these Anti-Doping Regulations and the Union's anti-doping regulations. Unions must further inform their members, Players and Persons that they must comply with the Board's Anti-Doping Regulations and the anti-doping regulations of the Union under whose jurisdiction they are participating.

41. There is no question that in this case, as in some other doping cases that Board Judicial Committees have dealt with, there has been a significant failure on the Union's part to fulfill its responsibilities. The Player would be fully justified in concluding that his Union has failed him. This is particularly so because the effect of the rules regarding personal responsibility and strict liability is that the athlete typically takes the full brunt, in terms of the sanctions resulting from the failure by Unions to implement adequate programmes to inform and educate players, coaches and other player support personnel on anti-doping issues and to ensure that up-to-date information concerning Prohibited Substances and Prohibited Methods is disseminated. Until the Board takes more proactive steps to call Unions to account for failing to comply with Regulation 21.14.2, avoidable incidents such as this will continue to occur.

42. The attitude of player support personnel such as Dr. King is, in our view, symptomatic of the problem. Instead of acknowledging, as Mr. Billups did, that the real problem lay with his own failure, as well as that of USA Rugby, to keep up to date with anti-doping rule developments and changes to the list of Prohibited Substances, Dr. King sought to excuse the Player's infraction on the grounds that, *inter alia*, as recently as 1999 the NCAA and the US Olympic Committee did not ban Proscar. We find Dr King's submission at best disappointing and at worst ignorant. Regulation 21, as noted, applies to each Union, and a Union's own anti-doping regulations must conform to Regulation 21. There was no suggestion before us that USA Rugby's anti-doping regulations are inconsistent with Regulation 21. Furthermore, we note that the US Olympic Committee has adopted and applied WADA standards and, therefore, that finasteride has, since 1 January 2005, been a banned substance in sports under the jurisdiction of the USOC. It is surprising that the medical director of a national rugby Union of the standing and stature of USA Rugby would not know this.

43. Notwithstanding the failings of USA Rugby and its player support personnel, we are bound to impose a period of ineligibility of two years unless we are satisfied that the Player has established, on a balance of probability, that he bore "No Fault or Negligence for the violation" or that he bore "No Significant Fault or Negligence".

44. The Player and the Union ask that we exercise leniency in his case. The Player has fully cooperated with the Board in its inquiry into this matter and with the BJC in respect of the conduct of this hearing.

45. While all of the factors discussed above might be regarded as mitigating circumstances, we are required to look at the criteria in Regulation 21.22.4 relating to the elimination or reduction of the otherwise applicable period of ineligibility based on exceptional circumstances.

46. To clearly establish that he bore No Fault or Negligence, the Player would have to demonstrate that he took all due care to prevent this violation.

47. With respect to the question of whether the Player bears “No Significant Fault or Negligence”, we have to view the totality of the circumstances, taking into account the criteria for No Fault or Negligence (i.e. whether the Player knew or suspected, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had used or been administered the Prohibited Substance), and then conclude that the Player’s fault or negligence was not significant in relationship to the antidoping rule violation.

48. A prerequisite to a consideration of exceptional circumstances, whether it be in the context of determining whether the Player bore “No Fault or Negligence” or “No Significant Fault or Negligence”, is that that the “Player must also establish how the Prohibited Substance entered his system” in order to have the period of ineligibility reduced or eliminated (Regulation 21.22.4).

49. In this regard, we adopt the rationale and the principles expressed by an independent anti-doping tribunal of the International Tennis Federation in the case of *Roy Mariano Hood* (8 February 2006) in which it was said:

The purpose of this provision is to confine the circumstances in which the automatic sanctions may be reduced to truly exceptional circumstances in which the player can show, the burden of proof lying upon him, how the substance did indeed enter his body. That burden of proof must be discharged on the balance of

probability. The provision thus ensures that mere protestations of innocence, and disavowal of motive or opportunity, by a player, however persuasively asserted, will not serve to engage these provisions if there remains any doubt as to how the prohibited substance entered his body. This provision is necessary to ensure that the fundamental principle that the player is personally responsible for ensuring that no prohibited substance enters his body is not undermined by an application of the mitigating provisions in the normal run of cases.

50. Noting that the player in question had clearly established that his positive test resulted from his use of finasteride for which a Therapeutic Use Exemption could have (but had not) been applied for, the tribunal in *Hood* noted that establishing the cause of the positive test does not necessarily make the circumstances of the case exceptional. Rather, by establishing how the substance entered his system, the athlete satisfies a precondition for the application of the exceptional circumstances provisions.

51. The tribunal in *Hood* continued:

No fault or negligence requires the player to show the utmost caution, that is that he had taken all the necessary precautions within his power to ensure that a doping offence could not be committed. It is not a standard of negligence, in the sense of requiring only reasonable care to have been taken. On the other hand the standard of the paradigm must not be set at such a level that it is practically unattainable or unrealistic. If the player fails to meet that very high standard 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 particularly culpable, but failed to meet the standard of utmost caution. In either case, no fault or no significant fault, the circumstances have to be truly exceptional. Again these exceptions have to be restrictively applied to prevent the principle of strict liability being eroded, so that the exception becomes the norm.

52. The fault of the Player is, to a considerable extent, understandable. The circumstances in which he ingested finasteride are clear and no competitive advantage was sought or gained. There was no evidence, as there was in the *Hood* case, that the Player had checked the prohibited list when he started to take finasteride (which was not a Prohibited Substance at the time) and thereafter assumed that its continued use was permissible: in the Player's case he had never turned his mind to whether finasteride was a prohibited substance. Nor is there an indication, as was the situation in the *Hood* case and in the case of *Zachery Lund* (Court of Arbitration for Sport case no: CAS OG 06/001, 10 February 2006) that the Player had been advised to check the prohibited list each year but had failed to do so: the Player had received little or no anti-doping information at all.

53. These findings stand against the requirement that it is each athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that athletes are responsible for any Prohibited Substance found in their bodily specimen. Ignorance of the rules is not a defence. The athlete must establish either that he did not know or suspect or that he could not reasonably have known or suspected, even with the exercise of utmost caution, that he was using a Prohibited Substance.

54. Short of sabotage, the undisclosed administration of a Prohibited Substance by a personal physician, or some similar circumstance entirely beyond an athlete's control, it will rarely, if ever, be possible for an athlete to establish that he or she bears "No Fault or Negligence". Accordingly, although we have considerable sympathy for the Player in this case, we cannot conclude that he has, on a balance of probability, established "No Fault or Negligence" and thus cannot reduce or eliminate the otherwise applicable sanction on that basis.

55. We are, however, persuaded that the Player bears "No Significant Fault or Negligence" for the presence of finasteride in his urine sample. As already noted, he was prescribed finasteride for therapeutic treatment of premature hair loss at a time when finasteride was not a prohibited substance. The Player only achieved international selection for the first time in June 2005 and has yet to actually play for his country. He

did not know he was part of the Board's Registered Testing Pool and he had received little or no anti-doping education or information.

56. While we find that, it was negligent for the Player to fail to take any steps to ensure that his use of finasteride would not transgress Regulation 21, when viewing all of the circumstances (and taking into account the standard that the Player did not know or suspect, or could not reasonably have known or suspected even with the exercise of utmost care, that he had used or been administered a Prohibited Substance), the Player's negligence was not, in our view, significant in relationship to the Player's anti-doping rule violation.

57. Regulation 21.22.4(b) permits us to reduce the Player's period of ineligibility by up to one half of the minimum period of ineligibility otherwise applicable, which, for this infraction, is two years. In the circumstances of this case we are of the view that the Player's period of ineligibility should be reduced by the maximum permitted to one year.

58. The Judicial Committee is entitled to take into account any period of Provisional Suspension and to credit it against the total period of ineligibility to be served. It is appropriate that we do so in this case. The Player will therefore remain suspended up to and including 27 December 2006. During that time he will be subject to the conditions of ineligibility provided in Regulation 21.22.7.²

59. If the Board wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.9, written submissions should be provided to the Judicial Committee and to the Player by 17:00 Dublin time on 21 April 2006, with any written submissions by the Player in response to be provided to the Board (which shall be responsible for

² For avoidance of doubt, Regulation 21.22.7 provides:

No Player or Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Match, Series of Matches and/or Tournament (international or otherwise) or activity (other than authorised anti-doping education or rehabilitation programs) authorised or organised by the Board or any Member Union. Such participation includes but is not limited to coaching, officiating, selection, team management, administration or promotion of the Game, playing, training as part of a team or squad, or involvement in the Game in any other capacity in any Union in membership of the IRB. In addition, for any anti-doping rule violation not involving specified substances described in Regulation 21.22.2, some or all sport-related financial support or other sport-related benefits received by such Player or Person will be withheld by the Board and its Member Unions.

forwarding such submissions on to the Judicial Committee) by no later than 17:00 Dublin time on 28 April 2006.

60. The Player's right to appeal this decision to the Court of Arbitration for Sport is provided for by Regulation 21.27.2. In this regard attention is also directed to the *Code of Sports-related Arbitration* (<http://www.tas-cas.org/en/code/frmco.htm>) and, in particular Rule 49 thereof which provides that in the absence of any other applicable time limit, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.

13 April 2006

A handwritten signature in black ink, appearing to read 'Graeme Mew' with a stylized flourish at the end.

Graeme Mew (for and on behalf of the Board Judicial Committee)

Gregor Nicholson

Barry O'Driscoll