

## INTERNATIONAL RUGBY BOARD

IN THE MATTER of the Regulations  
Relating to the Game

A N D

IN THE MATTER of an alleged doping  
offence by MOHAMAD  
AMIN JAMALUDDIN  
contrary to Regulation  
21

### BEFORE A BOARD JUDICIAL COMMITTEE APPOINTED PURSUANT TO REGULATION 21.20 AND 21.21 CONSISTING OF

#### Judicial Committee

Tim Gresson	(New Zealand)	(Chairman)
Yoshihisa Hayakawa	Japan	
Dr David Gerrard	(New Zealand)	

#### Appearances and Attendances

##### For the Board

Ben Rutherford	(Counsel for the International Rugby Board)
Tim Ricketts	(Anti-Doping Manager)

##### The Player

Mohamad Amin Jamaluddin

##### Malaysian Rugby Union

Nabil Ahmad Marzuki	(Hon. Secretary General)
Shah Iran Sahar	(Player's Club Vice President)
Mohamad Hafiz Hasnan	(Player's Club Manager)
Diego Kaslam	(Player's Witness)

#### Hearing

18 January 2011

### DECISION OF THE BOARD JUDICIAL COMMITTEE

1. This is a case involving the social use of cannabis by an International Rugby Player after he had been selected to represent his country at a major

Tournament, namely the 2010 Commonwealth Games (CG). Disappointingly, the player's conduct is similar to other cases involving the use of cannabis by players previously considered by Board Judicial Committees and resulted in sanctions being imposed<sup>1</sup>.

### **Background**

2. Amin Jamaluddin ("the player") represented Malaysia in the Rugby Sevens Tournament at the CG held in New Delhi, India on 11<sup>th</sup> and 12<sup>th</sup> October 2010. On 12<sup>th</sup> October he was tested<sup>2</sup> for prohibited substances. Subsequently the player's "A" sample provided during the test was found to have contained the prohibited substance 11-nor-delta 9-tetrahydrocannabinol-9-carboxylic acid (a metabolite of cannabis) at a concentration of 32ng/ml with uncertainty of 5.0 at R=2. This is a higher level than that prescribed by WADA (15ng/ml). Carboxy-THC is a Prohibited Substance listed under s.8 Cannabinoids of the WADA Prohibited List 2010. It is classified as a specified substance.
3. By way of his letter dated 3<sup>rd</sup> November 2010 the player admitted the anti-doping rule violation, namely the use of a Prohibited Substance (cannabis). The Commonwealth Games Federation Court (being the body established by the CG to review Adverse Analytical Findings and other potential anti-doping rule violations) determined that an anti-doping rule violation had been committed. The Federation Court nullified the player's participation in the Games and on 8<sup>th</sup> November pursuant to Article 10.5 of the Programme referred the matter to the IRB as the International Federation.
4. By letter dated 16<sup>th</sup> November 2010 the IRB advised the player of the results of the "A" sample and advised that in accordance with IRB Regulation 21.19 he was provisionally suspended. The provisional suspension became effective on 18<sup>th</sup> November 2010.

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<sup>1</sup> (refer [www.irb.com/keeprugbyclean](http://www.irb.com/keeprugbyclean) cannabis cases including Tu'ipuluto (2 December 2010), Van Staveren (17 February 2010), Chkhikvadze (2 June 2009), Pupuke (15 July 2008), Venegas (17 March 2009), Ward (14 August 2008), De Silva (4 February 2008), Zhamutashvili & Todua (27 September 2007), Nagelevuki (16 March 2007), Garbuzov & Rechnev (October 2006), Vadym (25 July 2005), Ho (22 December 2004), Larguet (8 October 2004))

<sup>2</sup> The in competition test was conducted pursuant to the Commonwealth Games Federation (CGF) Anti-Doping Standards. It reflects the World Anti-Doping Code and IRB Game Regulation 21

5. This Board Judicial Committee has been appointed to consider the player's case.
6. The hearing took place by way of a telephone conference call on 18<sup>th</sup> January 2011. Prior to the hearing the player provided a written submission dated 30<sup>th</sup> December 2010 in which he stated he took full responsibility for his actions and apologised to all concerned. Written submissions were received prior to the hearing from counsel for the IRB. At the hearing further written and oral evidence was received from the player and a witness (Diego Kaslam) was called to corroborate the player's account. Further submissions were subsequently made after the hearing on behalf of the IRB and by the player.
7. Although he stated he could not recall signing the document, the player accepted that prior to the CG on 13<sup>th</sup> May he signed the 2010 Entry and Eligibility Condition Form whereby he *"accept[ed] and agree[d] to abide by the CGF's rules pertaining to Anti-Doping as detailed within the CGF's Anti-Doping Standards adopted for the Games. [He] acknowledge[d] [he had] been provided access to a copy of the CGF's Anti-Doping Standards through [his] Commonwealth Games Association ("CGA"). As a condition of [his] entry and participation in the Games [he] further agree[d] to familiarise [him]self with and comply with the relevant provisions, rules, statutes and regulations of ... the CGF, the World Anti-Doping Code, [his] International Federation [namely, the IRB] ..."*.
8. The IRB Anti-Doping Regulations (which adopt the mandatory provisions of the WADA Code) set out the framework under which all players can be subjected to doping control. The Regulations (and the WADA Code) are based on the principles of personal responsibility and strict liability for the presence of prohibited substances.
9. Pursuant to 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. The violation occurs whether or not the player intentionally or unintentionally used the Prohibited Substance; or was negligent or otherwise at fault.

10. Regulation 21.6 addresses the principle of personal responsibility. It provides:

*“21.6.1 It is each Player’s responsibility to ensure that:*

- (a) No Prohibited Substance is found to be present in his body and that Prohibited Methods are not used;*
- (b) He does not commit any other anti-doping rule violation;*
- (c) ...*
- (d) He informs Player Support Personnel, including, but not limited to, his doctors of his obligation not to use Prohibited Substances and Prohibited Methods and to take responsibility to ensure that any medical treatment received by him does not violate any of the provisions of these Regulations.”*

*“21.6.3 It is the sole responsibility of each Player, Player Support Personnel and Person to acquaint themselves and comply with all of the provisions of these Anti-Doping Regulations including the Guidelines.”*

11. The IRB has the burden of establishing that an anti-doping rule violation has occurred to the comfortable satisfaction of the hearing body (Regulation 21.3.1). In this regard the player, prior to and at the hearing, acknowledged the use of the prohibited substance and accepted the analytical findings. Accordingly, we are satisfied that the player’s anti-doping rule violation resulted from him smoking cannabis at a social function on 6<sup>th</sup> October 2010 in Kuala Lumpur.

### **Sanctions – Regulatory Framework**

12. Article 4.2.2 of the CG Anti-Doping Programme which replicates IRB Regulation 21.4.5 provides: *“All Prohibited Substances shall be “Specified Substances” except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List”*. Cannabinoids are not within those excepted classes of substances and as such are “Specified Substances”.
13. Further, in relation to long-term sanctions, Article 10.5 of the Programme, IRB Regulation 21.22 applies. Ordinarily the period of Ineligibility for

Prohibited Substances for a first time offence is two (2) years (Regulation 21.22.1). However, this is subject to conditions for the eliminating or reducing the period of Ineligibility or conditions for increasing the period of Ineligibility.

14. Regulation 21.22.3 addresses the elimination or reduction of the period of Ineligibility for Specified Substances (including Cannabinoids) under specific circumstances in the following terms:

*“Where a Player or other Person can establish how a Specified Substance entered his body or came into his 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 Regulation 21.22.1 shall be replaced with the following:*

*First violation: At a minimum, a reprimand and no period of Ineligibility from the Game, 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 word which establishes to the comfortable satisfaction of the hearing panel the absence of intent to enhance sport performance or mask the Use of a performance enhancing substance. The Player’s or other Person’s degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.”*

15. Thus, in order to come within the ambit of Regulation 21.22.3, the burden is on the Player to:
  - (a) establish to the satisfaction of the BJC on the balance of probabilities how the Carboxy-THC (Cannabinoids) entered the Player’s body;
  - (b) establish to the comfortable satisfaction of the BJC that the Player’s individual Use of Cannabinoids was not intended to enhance sport performance or mask the Use of a performance-enhancing substance<sup>3</sup>; and

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<sup>3</sup> The nature of the burdens the Player must satisfy are set out in the Comments to Article 10.4 of the WADA Code (available at [www.wada-ama.org](http://www.wada-ama.org)). “While the absence of intent to enhance sport performance must be established to the comfortable satisfaction of the hearing panel, the Athlete may establish how the Specified Substance entered the body by a balance of probability.” The comment also elaborates in relation to the type of circumstances which in combination might lead a hearing panel to be comfortably satisfied of no-performance-enhancing intent, for example “the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete’s open Use or disclosure of his or her Use of the Specified Substance; and a contemporaneous medical records file substantiating the non sport related prescription for the Specified Substance ...”

- (c) in order to justify any reduction or elimination of the sanction the player, as a mandatory condition, must produce corroborating evidence in addition to the Player's word which establishes to the comfortable satisfaction of the BJC the absence of intent to enhance sport performance or mask the Use of a performance enhancing substance.
16. It should be noted that the assessment of the Player's degree of fault shall be the only criterion to be considered. This is emphasised by the commentary to Article 10.4 which is replicated by IRB Regulation 21.22.3 of the WADA Code. The WADA commentary states:
- "In assessing the Athlete's or other Person's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article. It is anticipated that the period of Ineligibility will be eliminated entirely in only the most exceptional of cases."*
17. To be complete we also refer to:
- Regulation 21.22.4 which provides that if the Player can establish that he *"bears no fault or negligence for the violation"* and how the prohibited substance entered his system then the period of ineligibility can be eliminated.
  - Regulation 21.22.5 provides if the Player can establish there is no significant fault or negligence on his part and how the prohibited substance entered his system then the period of ineligibility may be reduced to a period of not less than one half of the minimum period of ineligibility.
  - Regulation 21.22.6 provides for reduction in sanction if there has been *"Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations"*.
  - Regulation 21.22.7 provides for reduction in sanction if there has been an *"Admission of an Anti-Doping Rule Violation in the Absence of Other Evidence"*.

- Regulation 21.22.8 provides for a reduction sanction under two or more Regulations.

However, given the circumstances of this case only the provisions of Regulation 21.22.3 are required to be considered by us.

### **The Evidence – Player, Diego Kaslam & Malaysian Rugby Union (“MRU”)**

18. The player provided three written statements and gave oral evidence in response to questions from members of the BJC and Mr Rutherford. His evidence became more refined during the various stages of the hearing process. His evidence also contained some internal discrepancies but none of them were such that overall we found his evidence completely lacking credibility.
19. The player is aged 21 and for several years had represented Malaysia at senior and underage levels in 15s and 7s Rugby. This included competing in 14 International Tournaments at senior and underage levels and at the time of consuming the cannabis he was an active international player. He was fully aware of his imminent participation for his National Team at the CG.
20. The player stated that on 6<sup>th</sup> October 2010, while at a party he was urged to “*try something*” after he joined a group of males and females. He agreed, because he wished to impress a female friend and this resulted in him smoking a cigarette not knowing it was a banned substance - cannabis. However, he knew “*the thing*” did not only contain cigarette tobacco. He stated his behaviour was affected by alcohol which he said had reduced him to a state whereby “*he did not know what he was doing*” – hence his failure to check the cigarette did not contain a banned substance. He stated he had previously never consumed or smelt cannabis. The player stated he stopped smoking the cannabis cigarette when his friend, Diego Kaslam intervened by pulling him away from the group of persons. Mr Kaslam informed him that he was smoking cannabis and reminded him that he had been selected to participate at the CG within a few days.
21. The player confirmed that was aware that cannabis was illegal in Malaysia but following the evening and prior to the CG he did not inform the MRU or

Team Management that he had smoked an illegal substance and thus should withdraw from the competition.

22. He further stated that he did not know that cannabis is a banned substance in Rugby. He had not received any education from the MRU about doping in rugby. Nor, prior to the CG was he specifically advised of the danger of taking banned substances and that he could be drug tested when he was in New Delhi. Indeed he only became aware of the CG anti-doping booth after he had been tested. He stated following Mr Kaslam's intervention he thought there was only a 50% possibility he had consumed cannabis. Consequently he had "*forgotten*" he had smoked the substance and only thought of playing for his country at the CG.
23. The player stated that this was his first anti-doping rule violation. Indeed, he has played rugby since he was a child and the violation resulted in him being dropped from the Malaysian Team. His infraction has resulted in adverse newspaper publicity in local newspapers. His reputation as a Rugby player has been tarnished. He felt humiliated. As indicated at paragraph 16 these matters are not relevant in our assessment of the player's degree of fault.
24. The player's friend, Diego Kaslam (aged 28) gave evidence which in relation to the smoking of cannabis at the party essentially confirmed the player's account. He stated that at about midnight at the party he observed his friend smoking cannabis with a "*wrong group*" of persons. He intervened by reminding the player about the CG, told the player they were smoking cannabis and should leave. They left the party at about 12.30 am. He stated the player was significantly affected by alcohol.
25. The MRU confirmed there had been no formal education (including providing guidance based on information downloaded from the IRB anti-doping website) of players regarding the use of banned substances, although given the potential punishments for drug offences in Malaysia the MRU assumed players were aware of the perils of such offending. Further there was an expectation team managers and/or the coaches would educate the players.

## Discussion

26. We accept the player's evidence that he smoked cannabis in a social setting at the party and in so doing did not intend to enhance his performance as a player at the CG. Moreover, we are comfortably satisfied Mr Kaslam corroborated the player's evidence that he (the player) did not intend to enhance his playing performance when he smoked the cannabis at the party.
27. However, in assessing the player's degree of fault there are several troubling features in relation to his conduct:
- We are unable to accept that the player essentially was the "victim" of the circumstances as he infers. As Mr Rutherford submitted, given the well known features of social cannabis consumption (including an isolated group at the party passing a lighted cigarette smelling of cannabis between them) we are not convinced that the player was unaware he was smoking cannabis when he sought to impress his female friend. In this regard Mr Kaslam's evidence is of interest. Not only was it obvious to him the player's group was consuming cannabis, but it could also affect the player's participation at the CG – hence his understandable intervention.
  - Irrespective of whether he was aware he was consuming cannabis, on the player's and Mr Kaslam's evidence the player's conduct showed an unacceptable lack of caution; in that he chose to consume an unknown substance within five days he was scheduled to represent his country at the CG. Prior to ingestion he made no enquiries about the nature of the substance and whether it could be legally consumed.
  - But for Mr Kaslam's intervention, on the evidence it appears the player would have continued participating in the group smoking session. Indeed, initially the player did not stop and according to Mr Kaslam had to be "*convinced*" to desist.
  - We do not accept the player was so intoxicated he had completely lost his self control. Indeed, the evidence indicates that following the interaction between Mr Kaslam and the player he was able to comprehend that he should accept his friend's suggestion and leave the party.
  - The player's statements as to his lack of knowledge that cannabis is a prohibited substance we found to be less than convincing and we are not

satisfied the player was unaware of its prohibited status. Further, having been told by his friend he had consumed cannabis, he chose not to inform his Union and only confessed after he was advised of the result of the positive test. Essentially he elected to run the risk of being tested at the CG. Subsequently his actions resulted in adverse newspaper publicity for the fledging sport of rugby in Malaysia and the MRU.

28. Both counsel for the IRB and the player in their written material helpfully referred to recent decisions<sup>4</sup> where sanctions have been imposed following findings the players' accounts were corroborated by supporting evidence. All the cases involved cannabis being consumed by players in social settings but, of course each of them has their own aggravating and mitigating features which are fully discussed in each of the decisions.
29. The player suggested that the sanction imposed in Chkhikvadze (4 months suspension) could also be imposed in this case. However, we accept Mr Rutherford's submission that the player's infraction is more serious. Unlike Chkhikvadze, the player was not in a hostile situation and placed under pressure to smoke cannabis. As mentioned, the player elected to join a group of persons and participate in smoking a cigarette which it transpired consisted of cannabis because he was attempting to impress a female friend. This conduct occurred prior to the Team's departure to the CG. Indeed his friend had to intervene and remind him of his obligations. Further, following the advice from Mr Kaslam that he had participated in smoking cannabis despite only believing it was a "50/50 possibility it was cannabis" he could have informed team management and withdrawn from the team.
30. We note also the case of Van Staveren (6 months suspension) where the player (aged 34) was in the twilight of his rugby career and at the time of consumption did not believe he would play representative rugby again.
31. The player also submitted that there was a parallel between this case and Pupuke (4 months suspension). In part, we agree, but the latter player was only aged 19 at the time of the infraction. He had been selected to represent

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<sup>4</sup> Refer Van Staveren (6 months), Tu'ipulotu (5 months) and Chkhikvadze (4 months)

his country in the IRB Junior World Trophy Tournament. Further, despite the BJC's comments:

*“As the BJC has emphasised in previous cases, it deprecates the use of cannabis by players prior to or around the time of IRB tournaments and considers there is a need for a condign sanction to demonstrate that cannabis use during these periods is unacceptable.”*  
(Paragraph 27)

it is clear that since July 2008 the more severe sanctions which have been imposed in cases subsequent to Pupuke have not completely deterred further players from consuming the substance.

32. In mitigation, and to his credit, we are satisfied that the player was genuinely contrite and deeply regretted his irresponsible conduct. Further, following the positive test, at the first opportunity he admitted the anti-doping rule violation.
33. We also consider it is appropriate to comment on the responsibilities of the MRU in relation to the education of rugby players within its jurisdiction. The MRU as a constituent member of the Olympic Council of Malaysia became a signatory to the World Anti-Doping Code in February 2004. The website of the MRU confirms its compliance with the Laws and Regulations of the IRB which in turn reflect World Anti-Doping Agency (WADA) Policy including the responsibility to athlete education. In addition, the MRU receives an annual copy of the WADA list of prohibited substances intended for distribution to stakeholders. In this case, the player has over five years of national representation from age group to senior, but in spite of this he has not received any formal anti-doping education. Indeed, he told us his knowledge of prohibited substances in sport was minimal, in that he had little understanding of the status of any drugs other than steroids. As indicated, we had difficulty accepting this evidence but the fact remains while players cannot be absolved from self-responsibility, the absence of player education in anti-doping policy is of concern and needs to be addressed by the MRU.
34. Given the number of cases involving cannabis the need to impose a condign sanction to deter players from consuming the substance still exists. Indeed,

in this respect it is disappointing players have failed to take heed of comments previously made by Board Judicial Committees.

35. In light of all the factors identified we consider this was a serious anti-doping violation committed by a relatively experienced player only days before he was scheduled to participate in a major tournament. Further, as mentioned, we have taken into account previous decisions of BJC's in relation to cannabis violations and the need for consistency and deterrence in the sanctioning process. We have also taken into account the player's early acknowledgement of guilt, his expressed regret and remorse that his conduct has tarnished the image of rugby in Malaysia.
36. Having regard to all these factors, we consider the appropriate period of ineligibility to be one of six months commencing on the date of his provisional suspension, namely 18<sup>th</sup> November 2010 and continuing up to and include the 17<sup>th</sup> May 2011 (both dates inclusive).
37. The meaning of Ineligibility is set out in Regulation 21.22.13, 21.22.13A(i) provides:
- “No Player or Persons who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Match and/or Tournament (international or otherwise) or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by the Board or any member Union or Tournament Organiser. 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.”*
38. The sanction for the anti-doping rule violation committed by the player on 12<sup>th</sup> October 2010 by reason of the presence of the player's sample of 11-nor-9-carboxy-9-tetrahydrocannabinol (Carboxy-THC) at a concentration of 32ng/ml with uncertainty of 5.0 at R=2 is a period of ineligibility of six (6) months.

### **Appeal**

39. This decision is final, subject to a Post Hearing Review Body (Regulation 21.24) and, if applicable, an appeal to the Court of Arbitration for Sport

(Regulation 21.27). In this regard, attention is directed to Regulation 21.24.1, which sets out the process for referral to a Post Hearing Review Body, including the time within which the process must be started. For the sake of clarity, it is intended that the sanctions determined by the BJC in this matter shall replace any domestic sanctions imposed on the player by his Union.

**Costs**

40. If the Board wishes us to exercise our discretion in relation to costs (Regulation 21.21.10), written submissions should be submitted to the BJC via Mr Ricketts by 16:00 GMT on Friday, 4 March 2011, with any response from the player in writing to be provided to Mr Ricketts by 16:00 GMT on Friday, 18 March 2011.

T M Gresson (for and on behalf of the Board Judicial Committee)

Yoshihisa Hayakawa

Dr David Gerrard

14th February 2011