

# INTERNATIONAL RUGBY BOARD

IN THE MATTER of the Regulations Relating  
to the Game

A N D

IN THE MATTER of a doping offence by  
FUKUNOSHIMA VIKILANI  
("the Player")

## Judicial Committee

T M Gresson	(New Zealand)	(Chairman)
Yoshihisa Hayakawa	(Japan)	
Doctor David Gerrard	(New Zealand)	

Fukunoshima Vikilani	(Player)	
Lavina Vikilani	(Mother of Player)	
Mr Rod Holloway	(Counsel for the Player)	
Maria Sokolova	(Articled Clerk assisting Mr Holloway)	
Mr Mike Chu	(General Manager Rugby Operations & Performance Rugby Canada)	

Mr Ben Rutherford	(Counsel for the IRB)	
Mr Tim Ricketts	(IRB Anti-Doping Manager)	

## Hearing

3 October 2012 and thereafter by way of written submissions

## DECISION OF THE BOARD JUDICIAL COMMITTEE

1. The Board Judicial Committee (BJC) now provides its reasons for its decision released on 19<sup>th</sup> December 2012.
2. On 15<sup>th</sup> May 2012, Fukunoshima Hiroshi Yikilani ("the Player") provided a urine sample Number 2628075 during an Out of Competition Test conducted before the IRB Junior World Rugby Trophy 2012 ("the Tournament") played at Salt Lake City, Utah, United States of America, the following month.

Subsequently, the sample returned an Adverse Analytical Finding for the substances Furosemide and Hydrochlorothiazide (“the substances”).

3. Furosemide and Hydrochlorothiazide are classified as a diuretics under s.5 of the World Anti-Doping Agency’s (WADA) List of Prohibited Substances and Methods. The WADA Prohibited List is incorporated in IRB Regulation 21 as Schedule 2 and in the Anti-Doping Programme for the Tournament (the “programme”). It is well known that diuretics can be used as masking agents to allow Prohibited Substances (for example anabolic steroids) to be flushed out of the bodily system. Thus, they may be used by players for the purpose of concealing the use of Prohibited Substances from their urine when Doping Control Tested. The IRB has no record on file of a therapeutic exemption allowing the Player to use the Prohibited Substances.
4. Following receipt of the analysis of the A sample, and after a preliminary review conducted by Dr Ismail Jakoet (South Africa) on 15<sup>th</sup> June 2012 in accordance with IRB Regulation 21.20.1 (which confirmed that an anti-doping rule violation may have been committed), the Player was provisionally suspended on 25<sup>th</sup> June 2012. On 19<sup>th</sup> July 2012 the Player confirmed by way of correspondence from his Counsel he admitted the anti-doping rule violation but wished to be heard in respect of the appropriate sanction. Thus, the “B” sample was not analysed.
5. Throughout this case, the Player was unable to provide his Counsel (who generously on a “*pro bono*” basis has conducted very thorough investigations as to the potential source of the banned substances) and the BJC with an explicit explanation as to how the two diuretics in question had been ingested.

### **Factual Background**

6. As will become apparent, this is an unfortunate case. Factually, it parallels an earlier case IRB v Esau<sup>1</sup> (20 August 2007) which also involved a player of Pacific Island ethnicity, the substance Furosemide and the fundamental issue as to whether the player could establish on a balance of probabilities (Reg 21.3.1) how the specified substance entered his body.

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<sup>1</sup> Decision available at [http://www.keeperugbyclean.com/downloads/cases/18/esaudecision\\_4154.pdf](http://www.keeperugbyclean.com/downloads/cases/18/esaudecision_4154.pdf)

7. In a sworn affidavit the Player deposed he was born on 4<sup>th</sup> July 1993 and although his parents are from Tonga (his father represented the Senior National Team) he has lived most of his life in Canada. He has five siblings. Mr Holloway indicated the Player is from a humble background and given the Player's difficulties in learning and his potential talent as a Rugby Player, Rugby (through the auspices of the Rugby fraternity in British Columbia) as is often the case, has provided a stabilising and beneficial influence on his life.
8. Further, the Player has health issues which require prescribed medication but after a thorough investigation, Counsel for the Player accepts none of the Player's Doctors involved had prescribed or given him diuretics. Furthermore, a review (with the aid of a pharmacist) of the medicines used in the family home also indicated that they were not the source of the diuretics found in the Player's sample.
9. Counsel for the Player, also assiduously explored the possibility that the Player may have ingested the banned substances when, according to the Player, a team-mate (Jarrod Douglas ("Douglas")) gave him creatine (branded "Cell-Tech") and caffeine pills (branded "All Max") and Red Bull energy drink before a Canadian team training session on the morning of 15<sup>th</sup> May 2012 in Victoria<sup>2</sup>. According to the Player, Douglas had been told by the Canadian Rugby Union Trainer creatine was not a banned substance.
10. The Player deposed he took these substances as:

*"I understood creatine would increase the benefit of training and reduce recovery time and that the caffeine pills, would, along with the Red Bull energy drink, increase my energy-level and alertness. I have always had trouble sleeping and have received melatonin by prescription to help me relax and sleep. I used the caffeine pills and Red Bull to counter my lack of sleep. I thought caffeine was a natural substance which is found in coffee in small amounts."*
11. In spite of the strenuous efforts of Mr Holloway and his articulated clerk, Douglas has declined to fully co-operate by providing samples of the creatine and caffeine so that they could be forensically analysed for the purpose of

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<sup>2</sup> Prior to the 15<sup>th</sup> May for economic reasons the Player had been unable to participate in team training sessions. Thus, 15<sup>th</sup> May was his first day of team training.

ascertaining whether both or either products contained both or either of the banned substances. However, Douglas did provide the brand names of the creatine (*Cell-Tech*) and caffeine pills (*All Max*) although subsequently he failed to respond to several telephone messages and e-mails requesting details of the variety of the "*Cell-Tech*" creatine. Eventually, Douglas informed the Team Coach that he had disposed of both products and did not have any details as to their lot numbers.

12. Following this, as a result of the Player being able to show his Counsel and Ms Sokolova the specific products ("*Cell-Tech*" and "*All Max*") he used, with the co-operation of the IRB and the consent of the BJC, arrangements were made for samples of both products to be analysed at WADA's accredited laboratory in Montreal. On 23<sup>rd</sup> November 2012 the laboratory sent its Certificate of Analysis advising no Furosemide or Hydrochlorothiazide was found in the samples of the two products.
13. The Player denied he used drugs in a social setting. Accordingly, recreational use was eliminated as a potential source of the diuretics. Further, although on the Player's account there may have been minor procedural flaws in obtaining samples from him, Mr Holloway acknowledged "*none of these appeared to provide sound evidence of a source of drugs*". We agree.
14. The Player deposed that he had never received education either through sport or at school on the use of drugs but "*I do have general knowledge of the need to remain drug free in my sport. I would not knowingly use anything I believed to be a banned drug or substance to try to achieve a competitive advantage in playing rugby*". Subsequently, the Player qualified this comment (after Counsel for the IRB pointed out that the Player had the opportunity of learning about drugs and anti-doping measures when the IRB prior to the Tournament required Players to complete an on-line education programme prepared by the IRB. In addition, each Player received a copy of the IRB Anti-Doping Handbook) by deposing because of his learning disability he was unable to complete the prescribed course and read the Anti-Doping Handbook.
15. Mr Holloway adduced supporting evidence which included:

- Sworn affidavit evidence from the Player’s mother, Lavina Vikilani who confirmed her son suffers from Attention Deficit Learning Disorder and thus is unable to sufficiently concentrate “*to read more than a few sentences*”. She also described his other medical conditions and emphasised the importance of rugby in his life.
  - Unsworn statements, including a statement from the Director of the Barnaby Lake (the Player’s Rugby Club) Club. Based on his observations he stated he did not “*believe*” the Player used steroids. His rugby coaches at the club and his high school expressed the same view and both spoke of his great potential as a Rugby Player.
  - Michael James, former Club Coach, international player (1994 – 2007) and Director of the British Columbia Board of Directors emphasised how the core values of rugby (discipline, respect, tradition) can assist young persons mature into good “*upstanding men*”. He stressed the Player is from a “*God fearing Tongan family*” and grew up on the “*rough side of East Vancouver*” Many of the Player’s peers that previously played rugby of late have had issues warranting Court appearances. Mr James stressed the Player’s rugby playing skills and he never seen the Player with any physical features which suggested the illegal use of drugs.
  - The Player’s current Rugby Coach made similar supportive comments about the Player.
16. We briefly mention these comments, to highlight his potential as a Rugby player and because of his learning difficulties and other issues, the importance of rugby in his life. Regrettably, because of these factors, our task of applying the requirements of the TADP (Regulation 21) to the facts of this case has not been made any easier.

### **The Doping Offence**

17. The IRB Anti-Doping Regulations set out the framework under which all Players can be subjected to Doping Control and the procedures for any

alleged infringements of those Regulations. The IRB Regulations also adopt the mandatory provisions of the World Anti-Doping Code (“the Code”)<sup>3</sup>.

18. Both the IRB Anti-Doping Regulations and the Code are based on the principles of personal responsibility and strict liability for the presence of Prohibited Substances or the use of Prohibited Methods.
19. Pursuant to Regulation 21.2.1 (Clause 2.1 of the Programme) the “*presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample*” constitutes an Anti-Doping Rule Violation.
20. Regulation 21.2.1(a) provides:

*“It is each Player’s personal duty to ensure that no Prohibited Substance enters his 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 rule violation under Regulation 21.2.1”.*
21. In relation to the principle of personal responsibility Regulation 21.6 (Clause 6 of the Programme) provides:
  - 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, their doctors of their obligation not to use Prohibited Substances and Prohibited Methods and to take responsibility to ensure that any medical treatment received by them does not violate any of the provisions of the Regulations.*
  - 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.”*
22. Pursuant to Regulation 21.3.1 (Clause 3.1 of the Programme) the Board has the burden of establishing an anti-doping rule violation to the comfortable

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<sup>3</sup> The WADC can be found on the WADA website at [http://www.wada-ama.org/documents/world\\_anti-doping\\_program/WADP-The-Code/WADA\\_Anti-Doping\\_CODE\\_2009\\_EN.pdf](http://www.wada-ama.org/documents/world_anti-doping_program/WADP-The-Code/WADA_Anti-Doping_CODE_2009_EN.pdf)

satisfaction of the BJC. The Player accepts and does not challenge the analytical findings of the laboratory. Accordingly, the BJC finds the Board has established to the required standard the anti-doping rule violation; that is the presence of the Prohibited Substances Furosemide and Hydrochlorothiazide in the Player's bodily sample.

### **Sanction**

23. The IRB's regulatory framework stipulates that in imposing the appropriate sanction the BJC is required to apply the relevant provisions of Regulation 21 (which are based on the World Anti-Doping Code). The period of Ineligibility for a Prohibited Substance for a first time offence is two years pursuant to Regulation 21.22.1 (Clause 22.1 of the Programme).

24. As mentioned because Furosemide and Hydrochlorothiazide are specified substances pursuant to Regulation 21.22.3 (Clause 22.3) there is potential for a reduction in sanction. Regulation 21.22.3 provides:

***"Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances***

*21.22.3 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, and at a maximum, two years.*

*To justify any elimination or reduction from the maximum period of Ineligibility set out above, the Player or other person must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the Judicial Committee 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."*

25. It follows in order to satisfy Regulation 21.22.3 the Player is required:

- Firstly, on the balance of probabilities to establish how the Furosemide entered his body; and
- Secondly, establish to the comfortable satisfaction of the BJC that his Use of Furosemide was not intended to enhance his sport performance

or mask the Use of a performance-enhancing substance<sup>4</sup>. To justify any reduction or elimination of the sanction the Player must produce corroborating evidence in addition to his word of the absence of intent to enhance sports performance or mask the Use of a performance enhancing substance.

26. It follows, and if the foregoing pre-conditions are satisfied the Player's degree of fault shall be the criterion for assessing any reduction of the period of Ineligibility.
27. Regulations 21.22.4 and 21.22.5 (Clauses 22.4 and 22.5) also permit an elimination or a reduction in the mandatory sanction but again both Regulations require proof with regard to the Player establishing how the prohibited substance entered his body.

### **Hearing Process**

28. With the consent of Counsel, the BJC has been able to conduct most of this hearing by consideration of written material, consisting of sworn affidavits from the Player, his mother and Maria Sokolova, signed statements and comprehensive submissions by both Counsel. The BJC records its appreciation to both Counsel and Miss Sokolova for the diligent fashion in which they have respectively presented their cases.
29. Minutes, which included directions as to the hearing process, were issued by the BJC. In this regard, Counsel consented to the BJC's proposal that initially it should determine whether in relation to the preliminary threshold issue, the Player had established on a balance of probabilities the route of ingestion of the two banned substances.

### **Submissions – Route of Ingestion**

30. As mentioned, the BJC was assisted by the detailed submissions of both Counsel. To avoid unnecessary prolixity their submissions can be briefly summarised.

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<sup>4</sup> The nature of the burdens the Player must satisfy are set out in the Comments to Article 10.4 of the WADC which is available at [www.wada-ama.org](http://www.wada-ama.org). The Comments also elaborate upon 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 Specific 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 ..."*



31. Notwithstanding, the lack of forensic evidence, Mr Holloway submitted that the cumulative effect of all the circumstantial evidence was sufficient for the BJC to be satisfied the Player had proved on a balance of probabilities how the banned substances had entered his bodily system. The various factors relied on were summarised in his submissions as follows:

- “1. *The Player tested positive for two banned substances, furosemide and hydrochlorothiazide, both diuretics that are used to mask the use of steroids.*
2. *There have been no indicia of steroid use in Fuku. Fuku’s coaches have provided credible and reliable evidence that they not have observed any physical symptoms of steroid use in Fuku. Both coaches have many years of experience in working with rugby players.*
3. *Fuku has had little education about banned substances and their effects. Fuku has a significant learning disability which impeded his ability to study any anti-doping materials on his own. Therefore, his immediate sources of information were family, friends and teammates.*
4. *Taking any substances requires a keen understanding of the science behind them. Players are advised not to take substances without the advice of their doctors.*
5. *Fuku received many prescribed substances for other medical conditions and had frequently been told by others (medical professionals and family members) to take medical substances, of which he did not necessarily know the effects. Given his learning disability, he was less inclined to question substances that he is given.*
6. *Possible sources of the substances were examined. The sources were not Fuku’s numerous prescriptions or medicines in Fuku’s home.*
7. *Fuku testified that himself and his friend, Jared Douglas, took what Fuku believed to be creatine monohydrate and caffeine pills.*
8. *Research suggests that commercially sold substances, such as creatine monohydrate, are sometimes contaminated with outside products, some of which may be banned substances<sup>5</sup>.*
9. *Perusal of internet forums reveals many discussions of the effects of creatine, including bloating. Furthermore, these discussions reveal that many people who experience bloating*

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<sup>5</sup> See for example Baume N, Mahler N, Kamber M, Mangin P, Saugy M, “Research of stimulants and anabolic steroids in dietary supplements”, (2006) Scand J Med Sci Sports 16, 41; Geyer H, Bredehoft M, Mareck U, Parr M, Schanzer W, “High doses of the anabolic steroid metandienone found in dietary supplements”, (2003) Euro J Sport Sci. 1.3, 1.

*from creatine, consider taking a diuretic to counteract those effects<sup>6</sup>.*

10. *As a member of a rugby team with young players, with a lower awareness and perception about the dangers of doping, Fuku had greater access to banned substances and sources of banned substances.*
  11. *Mr Holloway made repeated efforts to contact Jared Douglas to obtain a sample of the products that the young men took. Mr Douglas was reluctant to respond. He eventually provided the names of the products but stated he no longer had the original products taken or their lot numbers.*
  12. *Not being able to obtain a sample of the substances take(n) by Fuku and Jared, Fuku bought and tested two substances of the same brand name as the products he took. The tests for contamination were negative.”*
32. Counsel submitted the Esau (supra) case can be distinguished on the basis unlike this case, the player was unable to present any evidence other than his suggestion the substances may have originated from his family.
33. Counsel submitted the BJC could “safely” draw the “valid” inferences that the sources of the substances were not from medication used by the Player or at his home. Further, given the Player’s disabilities, lack of scientific knowledge and knowledge about doping “*it is most unlikely that he could have devised a sophisticated doping scheme to take steroids and mask their use with diuretic substances*”.
34. He also submitted the “commercial” substances may have contaminated the banned substances which he received from “*his friends on the rugby team*”.
35. Mr Holloway, also (correctly in our view) requested the BJC to reject the “any doubt” test enunciated in the case of ITF v Hood<sup>7</sup> when the Tribunal stated:
- “... mere protestations of innocence, 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.”*

Emphasis added

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<sup>6</sup> See selected excerpts from internet forums

<sup>7</sup> ITF Tribunal, delivered 8 February 2006

Counsel submitted, the Player was not required to prove beyond any doubt the route by which the substances entered the body; rather the standard whether it was more probable than not.

36. Finally, Counsel emphasised the importance of rugby in the Player's life in that it provides "*hope and direction and a two year ban may have a significant adverse effect*". He submitted "*this case strongly suggests resolution by way of a personalized educational plan, with supervision and mentorship from superiors. This approach will create an acceptable balance between the ends of deterrence/punishment and rehabilitation through education*".
37. In reply, counsel for the IRB correctly emphasised before Regulation 21.22.3 can be invoked a Player must be able to prove the route of ingestion. In this regard he submitted:
- "there is simply no evidence that either of the supposed supplements taken by the Player were contaminated or otherwise the source of the two Prohibited Substances which give rise to this matter. Speculation by process of elimination (of the substances the Player has disclosed that he has taken, notwithstanding that there may be other products which he has not disclosed either to the BJC or his Counsel) or otherwise that these supplements must be the source does not, in the IRB's submission, satisfy that requirement."*
38. Counsel noted the non-disclosure of the supplements on the Doping Control Form and for this reason surmised there may have been other substances which were not disclosed. Mr Rutherford discounted Mr Holloway's submission that because of the Player's learning disability and lack of scientific knowledge he did not have the "*sophistication to devise a scheme to take steroids and mask their use by the use of diuretics*" by referring to other cases (Parada Heit<sup>8</sup> and De Klerk<sup>9</sup>) when seemingly "*unsophisticated*" athletes had access to banned substances and subsequently used them. Mr Rutherford suggested the internet or sources at a gym or even a doctor may be factors.
39. Mr Rutherford submitted that research articles (indicating commercial substances may be contaminated with banned substances) referred to by

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<sup>8</sup> <http://www.irbkeeprugbyclean.com/downloads/cases/63/J-121030-Heit%20Decision>

<sup>9</sup> <http://www.irbkeeprugbyclean.com/downloads/cases/59/120404%20IRB%20v%20Andre%20de%20Klerk>

the Player's Counsel, were of little probative value. Essentially, they were "more generic ... (p)ertinently, none of the research relates to these two substances specifically. The evidence which the BJC has before it, in particular the laboratory test, contradicts the theory advanced on the Player's behalf entirely. Further, as noted above, there is no evidence that these substances were present in the factories or produced by the same companies in the production chain allowing for possible contamination. The IRB Anti-Doping and Legal Departments' research has not revealed any reported case nor any commercially-available supplement which was either contaminated by and/or which otherwise contained these Prohibited Substances."

40. Finally, Counsel referred to the WADA commentary on Article 10.5.2 (the equivalent of Regulation 21.22.5 which permits a reduction from the mandatory sanction if not significant fault or negligence is established) which emphasises personal factors not connected to the actual violation may not be taken into account. That comment is also applicable to Regulation 21.22.3.

### **Discussion**

41. As mentioned, we reject the "any doubt" threshold standard of proof test (refer Hood supra) but in applying the lower standard of proof threshold as prescribed by Regulation 21.3.1 (balance of probability) despite Mr Holloways' persuasive submissions, we are not satisfied the Player has established the route of ingestion. Some of the factors listed by Mr Holloway, and which relate to the Player's personal circumstances suggest that the Player may not be a person who uses banned substances, but in the absence of adequate proof that does not mean such a use can be excluded. As was stated in Hood (supra). "Mere protestations of innocence and disavowal of motive however persuasively asserted" will not be sufficient to discharge the burden of proof.
42. Arguably, the combined effect of all the factors listed by Mr Holloway could give rise to the suspicion, creatine and the caffeine pills possibly could have been the source of the banned substances. But, it is no higher than that – suspicion. Indeed, conversely we consider there is force in Mr Rutherford's submission that there is no evidence either or both the supplements

supposedly given to the Player by Douglas was the source of the banned substances as if anything, the scientific evidence points to neither of these products containing the banned substances.

43. We also note that a number of the factors listed are based only on the Player's reporting. For example, his comments that Douglas gave him the creatine and caffeine pills. We understand how this problem has arisen but it is unfortunate, there is a lack of evidence supporting the Player's assertions.
44. In our view it is not without interest the Player tested positive to two banned diuretics which internet research indicates are commonly used in elderly patients to control fluid loss. Furosemide is a loop diuretic used in the treatment of congestive heart failure and edema that results in the accumulation of fluid in the lungs. Hydrochlorothiazide is a diuretic drug of the thiazide class that acts by inhibiting the kidneys' ability to retain water. It is a calcium-sparing diuretic meaning it can help the body get rid of excess water while keeping calcium. Given their propensity to stimulate the body to produce substantial amounts of very dilute urine, they are on the WADA Prohibited List. They are considered to be "*masking*" agents because they dilute the urine to such an extent that they may mask the presence of other performance-enhancing substances.
45. Research indicates, generally the medical use of diuretics in younger patients would be limited to the management of chronic kidney disease where the function of the kidneys is so impaired that excessive fluid can only be eliminated through the use of high dose diuretics and thus there would be an exceptional need to employ two different acting agents<sup>10</sup>.
46. As noted there was no medical evidence to the effect the Player's medical condition would have supported the use of these diuretics and if there was a genuine need for this form of treatment for a documented clinical condition there should have been a record of a Therapeutic Use Exemption.
47. This case has similarities to the Esau case. In Esau in rejecting a request to adopt a "*merciful*" approach because of personnel issues in relation to the Player and impose a lenient sanction, the BJC reminded itself it could not

overlook the regulatory framework which mandates the fundamental principle that a Player is personally responsible for ensuring no prohibited substance enters his body. In this respect the underlying rationale for the requirement that the route of ingestion of a prohibited substance is established to the required standard is for the purpose of evaluating the degree of caution exercised at the time of ingestion. As Mr Rutherford submitted "*the Regulation operates to prevent unsubstantiated tales of apparently inadvertent consumption from potentially triggering reductions. Hence this Regulation adopts a very logical structure in order to facilitate the assessment of the caution exercised by the player seeking to invoke the provision*".

48. Accordingly, notwithstanding the pleas for leniency and the views of Messrs James et al that it was unlikely the Player had taken a steroid which he subsequently attempted to mask, given that the player has been unable to discharge the burden placed upon him by the Regulations to establish how the prohibited substance entered his system, the BJC cannot impose a sanction which is less than the mandatory minimum sanction of a period of ineligibility of two years.
49. Mr Holloway submitted that "*this case strongly suggests resolution by way of a personalised educational plan, with supervision and mentorship from superiors. This approach will create an acceptable balance between the ends of deterrence/punishment and rehabilitation through education*".
50. However as we stated in our interim decision, the BJC is bound by the Regulations. In particular reference is made to the Anti-Doping Definition in Regulation 21 headed "**Consequences of Anti-Doping Rules Violations**" and Regulation 21.22.13A headed "**Prohibition Against Participating During Ineligibility**".

### **Decision**

51. For the reasons outlined, the sanction imposed for this anti-doping rule violation is a period of ineligibility of two years commencing from 25<sup>th</sup> June 2012 (the date upon which the Player's provisional suspension commenced) and concluding (but inclusive of) 25<sup>th</sup> June 2014.

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<sup>10</sup> eg. Jonah Lomu in the end-stages of his widely known chronic renal disease prior to transplantation.

**Costs**

52. The BJC provisionally considers that there should be no orders for costs, but if either of the parties wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.9, written submissions should be provided to the BJC via Mr Ricketts by 17:00 Dublin time on 31<sup>st</sup> January 2013, with any responding written submissions from the Players to be provided by no later than 17:00 Dublin time on 20<sup>th</sup> February 2013.

**Review**

53. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.25) or an appeal, where the circumstances permit, to the Court of Arbitration for Sport (Regulation 21.27). In this regard, attention is also directed to Regulation 21.24.2, which sets out the process for referral to a Post Hearing Review Body, including the time within which the process must be initiated.

DATED this 16<sup>th</sup> day of January 2013

T M Gresson  
Y Hayakawa  
Dr D Gerrard