

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 **CHRISTOPHER HITCH**
("the Player")

Judicial Committee

T M Gresson	(New Zealand)	(Chairman)
Doctor George Van Dugteren	(South Africa)	
Doctor David Gerrard	(New Zealand)	

Appearances and Attendances

For the Board

Ben Rutherford	(RWC Legal Counsel)
Tim Ricketts	(IRB Anti-Doping Manager)

Player

Christopher Hitch	(Player)
Dominic Villa	(Counsel for the Player)
Catherine Gleeson	(Counsel for the Player)
Peter Lawrence	(Vice President, PRFU)
Expo Mejia	(Head Coach, PRFU)
Damian Raper	(Team Physiotherapist)
Joe Barranco	(Doping Control Officer)

Hearing

22 May 2012 (by way of telephone conference and thereafter by written submissions)

DECISION OF THE BOARD JUDICIAL COMMITTEE

1. The Board Judicial Committee ("BJC") now provides its reasons for its decision released on 27th June 2012.
2. Christopher Hitch ("the Player") aged 23, was born in the Philippines, where he lived until he was five years old, when he moved to Australia. When he attended secondary school he played rugby. Following his schooling, he

continued playing Club Rugby as an amateur and for the Philippines National 15 and 7 a side teams known as the "Philippines Volcanoes" ("the Volcanoes"). The Player participated in the Asian Rugby Football Union's 5 Nations Tournament in 2011 and 2012 and the Sevens Series in 2010 and 2011. He represented the Philippines in the HSBC Sevens World Series Tournament played in Hong Kong between 23rd and 25th March 2012 ("the Tournament").

3. During April 2011 the Player commenced taking a Dietary Supplement branded as "*Mesomorph*" which he purchased from a health food shop in Newcastle, Australia. The Player stated he used the supplement on an intermittent basis because he suffered from tiredness arising from the demands of his occupations as a scaffolder, delivering furniture and appliances, and his intense fitness and training schedules. Because he felt "*very tired*", he took the recommended dose of the supplement in lieu of "NoDoz" (a caffeine tablet) which the Team Physiotherapist (Mr Raper) distributed to players prior to matches and prior to the Philippines first match of the Tournament, against Canada on 23rd March 2012.
4. Following this match the Player provided a urine sample (Code Number 2693335) during the In-Competition Test conducted on behalf of the IRB. When the Player provided the sample he failed to declare he had taken a supplement prior to the match. Subsequently, the sample returned an Adverse Analytical Finding for the substance Methylhexanamine ("MHA").
5. MHA is classified as a Specified Stimulant under s.6 of the World Anti-Doping Agency's (WADA) 2012 List of Prohibited Substances and Methods. It is a specified substance and is prohibited for use In-Competition. The WADA Prohibited List was incorporated into the Tournament's Anti-Doping Programme (TADP). The TADP was based upon IRB Regulation 21. The Player accepted he had not applied for a therapeutic exemption allowing him to use the substance.
6. Following receipt of the analysis of the A sample, and after a preliminary review conducted in accordance with Clause 20.1 (which confirmed an anti-doping rule violation may have been committed), the Player was notified of his Adverse Analytical Finding and was provisionally suspended on 17th April

2012. Subsequently the Player indicated he did not require the “B” sample to be analysed and admitted the anti-doping rule violation which he attributed to his ingestion of the supplement.

7. The Player accepted he had signed the Team Member Consent Form prior to the commencement of the Tournament, on 21st March 2012. The Consent Form was attached to the Participation Agreement which included provisions relating to the Tournament’s Anti-Doping Programme. The Player acknowledged he was bound by the Anti-Doping Programme and had the opportunity to read and understand the Terms of Participation for the Tournament. The Player also acknowledged he had signed similar Player Consent Forms in relation to the Asian Rugby Football Union’s 5 Nations Tournament in 2011 and 2012 and the Asian Seven’s Series in 2010 and 2011.

The Tournament Anti-Doping Programme – IRB Regulation 21

8. The TADP, which is based upon the IRB Anti-Doping Regulations, prescribes the framework under which all players can be subjected to Doping Control and the procedures for any alleged infringements of the Programmes. The Regulations (and the TADP) also adopt the mandatory provisions of the World Anti-Doping Code (“the Code”)¹.
9. Both the TADP, Regulations and Code are based on the principles of personal responsibility and strict liability for the presence of Prohibited Substances or the use of Prohibited Methods.
10. Pursuant to Clause 2.1² of the TADP the “*presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample*” constitutes an anti-doping rule violation. It provides:

“The presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample constitutes an anti-doping rule violation. A violation does not require intent, fault, negligence or knowing use [as defined in the TADP] on the part of the Player”.
11. In relation to the principle of personal responsibility Clause 6³ provides:

¹ The WADA Code 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

² The equivalent of IRB Regulation 21.2.1

³ The equivalent of IRB Regulation 21.6

- 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."*

Mesomorph - MHA

12. Photographs (which were produced and are attached as Appendix 1) of the labelling of the product, lists "*Gerainium (sic) oil extract*" as an ingredient.
13. Prior to the Tournament the Philippines' Rugby Union ("PRU") had been sent copies of the IRB Anti-Doping 2012 Handbook, the contents of which the Coach (Mr Mejia) briefly discussed with the players prior to the Tournament. Unfortunately, although the players were advised they could peruse the handbook if they wished, the Coach did not discuss specific substances with the Team nor were copies of the handbook distributed to them. The handbook includes relevant information in relation to dietary supplements and MHA, and clearly warns players about the need for caution regarding the use of any dietary supplements. The relevant pages of the handbook are attached (Appendix 2) and it will be noted that "*geranium, geranium oil or geranium root extract*" appear as alternative variants/names for MHA.
14. For reasons which will become clear, during the period the Player was taking Mesomorph neither he nor Mr Raper (with whom in June 2011 the Player discussed the supplement) made the connection between the ingredient geranium oil extract and MHA. Consequently, the Player continued using the supplement unaware of the fact it contained the banned substance MHA.
15. Further, in August 2011 the IRB proactively sent all Member Unions (including the PRFU) further specific information in relation to supplement use and MHA which it appears also was not drawn to the Player's attention.

Anti-Doping Violation Established

16. Pursuant to Clause 3.1⁴ of the TADP, the Board has the burden of establishing an anti-doping rule violation to the comfortable satisfaction of the BJC. As indicated, it is common ground the Player took the supplement “*Mesomorph*”, which contained the banned substance MHA. Thus, he accepted and did 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 Substance Methylhexaneamine in the Player’s bodily sample.

Sanction – Regulatory Framework

17. The IRB’s regulatory framework stipulates that in imposing the appropriate sanction the BJC is required to apply the relevant provisions of Clause 22 (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 Clause 22.1 (IRB Regulation 21.22.1).
18. As noted, MHA is a Specified Substance. The relevant provision is Clause 22.3 (IRB Regulation 21.22.3) which provides:

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

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.”

⁴ The equivalent of IRB Regulation 21.3.1

19. It follows that in order to satisfy Clause 22.3 the Player is required:
- On the balance of probabilities to establish how the MHA entered his body; and
 - To establish to the comfortable satisfaction of the BJC that his Use of the specified substance MHA was not intended to enhance his sport performance or mask the Use of a performance-enhancing substance⁵. 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.
20. There was no suggestion in this case of an intention to mask the use of a performance enhancing substance and thus, that aspect requires no further consideration.
21. If the foregoing pre-conditions are satisfied the Player's degree of fault is the criterion for assessing any reduction of the period of Ineligibility.
22. There have been conflicting previous cases which have discussed the meaning of the words "*absence of intent to enhance sport performance*". The decisions of WADA v Federation Internationale de Volleyball ("FIVB") & Berrios (Court of Arbitration for Sport ("CAS") 2010/A/2229) and Union Cycliste Internationale ("UCI") v Kolobnev (CAS 2011/A/2645) approve the approach adopted in Oliveira v United States Anti-Doping Agency (CAS 2010/A/2107) "*that an athlete only needs to prove that he/she did not take the specified substance with an intent to enhance sport performance. The athlete does not need to prove that he/she did not take the product ... with the intent to enhance sport performance.*" On the other hand in a decision of another CAS panel, namely Foggo v National Rugby League (CAS A2/2011, 3 May 2011) the panel found the athlete was required to prove "*that the ingestion of the product which contained the specified substance was not intended to enhance sport performance*" (para 46).

⁵ 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. 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 ...*"

23. On 27th January 2012 an IRB Post Hearing Review Body in a decision (IRB v Murray⁶) concluded the Oliveira approach should be adopted, that is, consideration of the Player's intention to enhance performance should be by reference to the specified substance itself, rather than the supplement which contained the specified substance (refer paras 46 et seq).
24. Following these decisions on 2nd May 2012 the UK Association Regulatory Commission in its decision⁷ rejected the approach in the Oliveira and Murray cases, noting the latter decision did not refer to relevant passages from the decision in UKAD v Dooler, 24 November 2011 and the "*infelicitously expressed paragraph 67(a) was open to two interpretations*".
25. For completeness, reference should also be made to the first draft of the revised WADA 2009 Code dated 11 June 2012 distributed to its stakeholders for comment. In relation to Article 10.4.1 which *per se* has not been the subject of any proposed significant amendments and is the equivalent of IRB Reg 21.22.3 the additional comment is made:
- "[Comment to Article 10.4.1: Contrary to the CAS decision in Oliveira v. USADA, CAS 2010/A/2107, where an Athlete or other Person Uses or Possesses a product to enhance sport performance, then, regardless of whether the Athlete or other Person knew that the product contained a Prohibited Substance, Article 10.4.1 does not apply.]*
26. There has also been discussion in previous cases as to what constitutes corroboration for the purposes of Reg 22.3. Indeed, significantly the revised WADA first draft replaces the need for the person to produce corroborating evidence with the requirement the person must produce "*credible*" evidence of an absence of intent to enhance sport performance. The BJC agrees with this approach. Clearly if it is eventually adopted by WADA, the assessment of the supporting evidence will become a more straight-forward exercise as it will not be necessary to determine whether the supporting evidence technically can amount to corroboration. The credibility of the supporting evidence will be the sole focus.

⁶ <http://www.keeprugbyclean.com/downloads/cases/58/J-120127-GM-Murray%20PHR%20Decision.pdf>

⁷ The Football Association v Mark Marshall

27. As both Counsel noted, the BJC's comments in IRB v Chvihivivadze⁸ allow findings of corroboration in the "overall context" of the circumstances of a case. At para 28, the BJC stated:

"In this case, counsel for the Board conceded that factors which it would be open to us to consider would include the amount of Carboxy-THC found in the Player's system and the proximity of the Player's stated consumption to the date of testing. In our view, however, a tribunal can also consider the overall context of the events related by the Player in assessing whether there is corroborating evidence of the Player's account. Corroborating evidence does not have to be evidence of what was in the Player's head at the time (such evidence will rarely, if ever, exist), but is evidence of other surrounding circumstances that are consistent with, or supportive of, what the Player says his intent was."

28. As an alternative to Clause 22.3 pursuant to Clauses 22.4 and 22.5 (IRB Regulations 22.22.4 and 21.22.5), players may also rely on the exceptional circumstances of these provisions to have the period of Ineligibility eliminated or reduced by up to one-half of the period of Ineligibility. In this case, the maximum reduction potentially available to the Player is a period of one year.
29. Finally, in addition to the explanatory material that has been distributed by the IRB, Clauses 6.4 and 6.5 (IRB Regulations 21.6.4 and 21.6.5) of the Programme provide a clear warning to players in relation to the use of nutritional supplements and his/her personal responsibility to ensure he/she does not commit anti-doping violations.

"Nutritional Supplements

6.4 The use of nutritional supplements by Players is a risk as in many countries regulations either do not exist or are limited in nature in relation to the manufacturing and labelling of supplements. This may lead to a supplement containing an undeclared substance that is prohibited under the Programme. Nutritional supplements may not be regulated or could be contaminated or suffer from cross contamination or may not have all the ingredients listed on the product label. Players are advised to exercise extreme caution regarding the use of nutritional supplements.

6.5 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 or

⁸ www.keeprugbyclean.com/downloads/cases/31/j-09602-gm-chvihivivadze_8981.pdf

supplements are prohibited. For the avoidance of doubt nothing herein shall displace the Player's responsibility to ensure he does not commit an anti-doping rule violation."

The Player's Case

30. Counsel provided detailed written submissions on behalf of the Player. They have been fully considered by the BJC but without wishing to convey any disrespect to Counsel for the obvious care they have taken in preparing their submissions, for convenience we summarise some of the matters referred to.
31. Counsel submitted the player had established the ingredients of Clause 22.3 to the requisite standard (comfortably satisfied) and the Player's degree of fault was ultimately the issue which required determination. In this regard, it was submitted the ingestion of the supplement by the Player established how the MHA entered his body and further in relation to the Oliveira (confirmed in Murray) principle, the Player was unaware he had consumed a specified substance (ie. MHA) and therefore did not intend to use it to enhance performance. In relation to corroboration Counsel referred to the Player's and the Team Physiotherapist's lack of knowledge the supplement contained MHA or any other Prohibited Substance. Further, the supplement was only taken on 23rd March 2012 to alleviate fatigue; not to enhance performance.
32. In relation to the Player's degree of fault, Counsel pointed to a number of factors, including:
 - The Player's "*rudimentary*" knowledge of anti-doping requirements, and the failure of the PRFU to implement a comprehensive anti-doping programme which ensured the players were properly educated as to the dangers of taking chemical substances and dietary supplements.
 - The Team Member Consent Form (which was attached to the Participation Agreement for the Tournament thereby acknowledging the IRB's anti-doping programme) was given to the Player without him having the opportunity of fully reading the documents prior to signing.
 - The only person available for consultation by the Player was the Team Physiotherapist. There was not a Team Physician.
 - The Player commenced taking the Mesomorph after it was recommended to him by colleagues at the gym where he trained. He

only took it intermittently when he was tired and did not know it contained a banned substance.

- The Player did not read the Mesomorph product label but approximately two months after he had commenced taking the supplement he consulted the “*only available sports-related health practitioner*”, namely the Team Physiotherapist, to ensure the supplement did not contain a prohibited substance. Mr Raper researched the supplement’s name Mesomorph and list of ingredients for MHA on the Australian Sports Anti-Doping Authority (ASADA) website and concluded none of the ingredients of the supplement were listed. Unfortunately the Player relied on this advice, which he did not appreciate was fundamentally flawed.
- The Player’s failure to provide accurate information to the Doping Control Officer (DCO) was explained on the basis he was questioned in relation to his daily medications or supplements. Because he used the supplement on an irregular basis (ie. not every day) he only mentioned he had taken Zinc and Magnesium. Further, the Player’s failure to disclose he had taken the supplement that day was as a result of feeling “*nervous*” (he did not want to be at the test) and “*confusion*” on his part.
- The Player’s lack of medical and scientific knowledge. He did not appreciate he should consult a Physician, rather than the insufficiently qualified Team Physiotherapist, in relation to a potential anti-doping matter. Further had he made his own enquiries it was likely he still may not have been alerted the supplement contained a banned substance.

33. In summary the Player accepted it was his fundamental obligation “*to do everything in his power to avoid ingesting a prohibited substance*” but it was submitted the Player’s degree of fault was “*at the very lowest end of the scale, and that an official reprimand coupled with the period of ineligibility he has already served since 17 April 2012 and the knowledge that any future anti-doping violation will carry the more severe consequences of a second violation (under Clause 22.10) is sufficient sanction*”.

The IRB Submissions

34. Counsel for the IRB also provided to the BJC detailed written submissions which again have been fully considered by the BJC. Again for convenience we will only summarise some of Counsel’s comprehensive submissions.

35. In relation to the ingredients of Clause 22.3, Counsel indicated the IRB would abide by the decision of the BJC as to whether these had been established.
36. In relation to the Player's degree of fault, the IRB pointed to a number of features of the violation which indicated there was a "*high degree of fault and at the top end of the scale of recent IRB cases*". In this regard reference was made to:
- (a) IRB v Gurusinghe, Swarnathilake and Kumara (IRB BJC, 16 September 2011 – Methylhexaneamine, nine months' Ineligibility)⁹;
 - (b) IRB v Murray (IRB Post-Hearing Review Body, 27 January 2012 – Methylhexaneamine, twelve months' Ineligibility).
37. Mr Rutherford also referred to other cases involving MHA and comparable specified substances namely Oliveira (Oxilofrine – 15 months ineligibility), Foggo (MHA – 6 months ineligibility), Murray (MHA – 12 months ineligibility) WADA v FIVB & Berrios (supra), Duckworth v UK Anti-Doping (National Anti-Doping Panel, 10 January 2011 – Methylhexaneamine, six months' Ineligibility), The Football Association ("FA") v Touré (FA Regulatory Commission, 28 May 2011 – Bendroflumethiazide, six months' Ineligibility); and Kolobnev (supra) – hydrochlorothiazide, reprimand.
38. Counsel noted the sanctions imposed in those cases were determined on the facts of each case. He distinguished the Kolobnev case on the basis of findings by CAS the Russian cyclist had consumed a product with no connection to sport performance on the recommendations of his Doctor and Team Doctor to treat a long-standing vascular disease and thus there was a low degree of fault¹⁰.
39. Counsel also referred to WADA's comment in relation to any reduction of sanction for the taking of specified substances "*... the period of ineligibility will be eliminated entirely in only the most exceptional cases*"¹¹.

⁹ <http://www.keeprugbyclean.com/downloads/cases/53/J-110916-GM-Sri%20Lanka%20Players%20Decision.pdf>

¹⁰ Refer commentary article 10.4 which is the same as Clause 22.3 of the Programme and IRB Regulation 21.22.3.

¹¹ Refer commentary article 10.4.

40. In spite of admitted awareness of the inherent risk of supplements containing banned substances, and the Player being warned by Team Management about the dangers of taking supplements, Mr Rutherford submitted the Player with “*minimal*” effort either via Google or checking with his own Doctor or a sports Doctor and other research could have ascertained “*Mesomorph*” contained a prohibited substance. Counsel was critical of the Player’s failure to read materials (including forms relating to the anti-doping programme for the Tournament).
41. Counsel was also critical of the Player while playing Club Rugby in Australia at not checking the product was permitted. Indeed, it was submitted the Player only took steps to check the product did not contain a banned substance when he knew he would be tested following his selection to participate in International Rugby.
42. It was also submitted, that in spite of the Team Coach discussing the IRB Anti-Doping Handbook at a meeting prior to the Tournament, the Player still failed to conduct any research of his own and take any precautions in relation to the Mesomorph. Further, this was against the background of Mr Raper acknowledging because he is not medically qualified, he was only able to give qualified advice in relation to the supplement.
43. Finally, Counsel referred to what he characterised as an “*aggravating factor*” in the inherent contradiction in the Player’s evidence in that on the one hand his denial of knowledge using the supplement could pose an anti-doping risk but on the other hand he considered he needed to consult Mr Raper.

TADP Clause 22.3 Findings

44. As previously indicated in its decision dated 27th June 2012, the BJC was satisfied the three pre-conditions for the application of Clause 22.3 of the TADP have been established.
45. In relation to the debate as to how the words “*absence of intent to enhance sport performance*” should be construed, the BJC considered the views of various panels/committees and concurred with the comments of the Commission in Football v Marshall “*it is not a sterile debate (only) of academic interest*”. Clearly, the conflict will need to be resolved and it is

encouraging that WADA in its revised first draft of the 2009 Code has attempted to address the problem, although it is still debatable whether the proposed additional comment (refer para 25 supra) achieves this.

46. Putting aside the question whether the BJC is bound by the decision of the IRB Post-Hearing Review Body in Murray, and approaching the matter on the basis of the least favourable interpretation to the Player (ie. the approach adopted in Foggo) we accept the Player's own word that he did not know the product Mesomorph contained a specified substance (in particular MHA) and thus, it was not taken with the intention of enhancing sport performance, but because of its restorative effect to overcome tiredness.
47. Moreover, the IRB (through Counsel) did not suggest at any stage of the proceeding that Oliveira or Murray were incorrectly decided and should not be followed. Hence, there would be an element of unfairness if the BJC departed from what was essentially an agreed position of the parties at the hearing. Accordingly, for these reasons the BJC in this decision does not consider it necessary to comment further on the debate as to the approach which should be adopted. Clearly, it is an issue WADA will need to address in a definitive fashion during its current review of the Code.
48. In relation to the issue of corroboration, the BJC was comfortably satisfied there was sufficient evidence which corroborated the Player's assertion he did not intend to take the supplement for the purpose of enhancing sport performance. Essentially there were two sources of this evidence. Firstly there is corroboration in the "overall context" of the demanding physical requirements of the Player's employment causing him to feel tired and his need to use the Mesomorph to overcome this problem. Secondly, his evidence is corroborated by Mr Raper who confirmed in June 2011 during the Asian 5 Nations Championship the Player sought advice about the product he was using to overcome tiredness.

Assessment of Degree of Fault (if any)

49. Not surprisingly, as mentioned Counsel in relation to the degree of fault on the Player's part respectively suggested sanctions which were almost at the opposite ends of the scale for anti-doping infractions involving MHA. Counsel for the Player urged the BJC to accept the proposition the Player's

conduct was at the “*very lowest end of the scale*” and a reprimand together with a period of ineligibility since the 17th April 2012 would constitute a sufficient sanction. On the other hand, Counsel for the IRB submitted because of the Player’s “*high degree of fault the sanction should be at the top end of the scale of recent IRB cases*” eg. Gurusinghe, Swarnithilake and Kumara (supra) – 9 months ineligibility – Murray – 12 months ineligibility. It is noted the range of sanctions imposed in the cases previously referred to extend from a 15 month period of suspension to a reprimand and warning. The BJC is cognisant of the need for consistency in the sanctioning process. However, although reference to previous cases can be of assistance ultimately each case must depend on an evaluation of the evidence presented in that particular case.

50. This is another case where a Player has attempted to “*outsource*” his personal responsibility of satisfying himself the supplement did not contain a prohibited substance. As has been made clear in several cases (see Paterson¹² and Pronenko¹³ for more recent examples) the fundamental imperative of the IRB’s Anti-Doping Programme is players have the personal responsibility of ensuring they do not use medication and supplements which contain prohibited substances. They cannot simply leave it to others; in this case the Team Physiotherapist who by his own admission accepted he was not fully equipped to provide the Player with completely authoritative advice. As was stated in the case of Wallander, cited in Duckworth (supra):

“Any athlete who takes a supplement without first taking advice from a qualified medical practitioner with expertise in doping control places herself at real risk of committing a rule violation. Only in the most exceptional cases could such an athlete expect to escape a substantial sanction if a Prohibited Substance is then detected.”

(emphasis added)

51. Clearly with the benefit of hindsight the Player in this case should have obtained qualified medical advice and accordingly we are not satisfied this is an “*exceptional*” case whereby he should escape a sanction involving suspension. In our view, the issue requiring determination is the extent of the period of ineligibility.

¹² www.keeprugbyclean.com/downloads/cases/57/IRB%20v%20Paterson%20Decision.pdf

¹³ www.keeprugbyclean.com/downloads/cases/56/Y14123659-Pronenko.pdf

52. In exercising his responsibilities in relation to anti-doping the Player acted in what can only be described as a casual, if not cavalier, fashion in his use of a questionable supplement. He is a reasonably experienced Club and International Rugby Player. He was ill-informed on anti-doping matters but generally he was aware of the perils of using banned substances and in declining the team issue of “NoDoz” at the Tournament it can be inferred he was aware of the stimulant effect of Mesomorph.
53. Further, it is of concern the Player initially decided to use the supplement on the basis of the advice of his colleagues at the gym and without conducting any research himself. The advice of Mr Raper was only sought when he was about to participate in International Rugby. Ultimately, once again he abdicated his personal responsibility of conducting his own research and left it entirely to Mr Raper’s cursory Internet search which failed to ascertain the supplement contained a prohibited substance.
54. Importantly, he had access to anti-doping information which he chose not to use. As mentioned prior to the Tournament, the Team was made aware of the IRB Anti-Doping Handbook. A brief summary of its contents was provided by the Coach and players were advised they could peruse his copy. The Handbook contains very clear warnings about Dietary Supplements including:
- “The principle of personal responsibility cannot be abdicated because of the actions of coaches or medical advisers or any other person associated with the Player’s Union or Team. The fact that supplements may be provided by a Player’s Club, Union, or other Rugby Body, will not absolve the Player of his or her responsibility for the consequences if the use of such supplements result in an anti-doping rule violation. This will be the case even if there was no reason to suspect that the supplement contained a prohibited substance.”*
55. In spite of the fact the Player was using a supplement he did not consult the Handbook and further overlooked the warnings on the supplement’s label including the direction “as with any supplement check with your physician prior to use” (emphasis added). Clearly, therefore, the Player failed to take his personal responsibility to anti-doping in rugby seriously.
56. In addition, we found the Player’s explanations with regard to his failure to include Mesomorph in the declaration of medication and supplements on the

Anti-Doping Form less than convincing. In spite of his Senior Counsel's searching cross-examination and submissions, we are satisfied the Doping Control Officer (Mr Barranco) did not indicate to the Player only daily medication or supplements should be included (as was suggested). This assertion is contrary to the established protocol which is printed on the form requiring a declaration of medication and/or supplements taken during the last seven days. Given, Mr Barranco's experience and evidence we do not accept he departed from the usual process when he questioned the Player. The Player declared he had taken zinc and magnesium tablets and thus, it could be inferred the Player attempted to "*cover up*" his use of Mesomorph which he had taken that day. This called into question the veracity of his evidence that he was unaware the supplement contained a banned substance. However, we accept there is a less sinister inference. We accept the Player's evidence he was nervous at the time of the test. He reluctantly attended the testing facility and for those reasons may have been mistaken or confused as to the nature of the questions that were put to him. Given the inferences are of approximate equal weight, we are prepared to accept the latter which is more favourable to the Player.

57. We accept there are extenuating or mitigating factors which can be properly taken into account in assessing the Player's degree of fault. As mentioned, the IRB provided the PRFU with educational and other material, some of which specifically referred to the dangers of supplement use and MHA. Regrettably, in spite of this, the Union failed to ensure its players received sufficient anti-doping education (including distributing copies of the IRB Handbook to members of the Team) so they were fully informed about the dangers of using medications or supplements which may contain prohibited substances. Further, the Union failed to provide a properly qualified health professional from whom players could seek advice on anti-doping matters. Also, we accept the Player received no education in relation to anti-doping while playing Club Rugby in Australia and articles in the media had little, or no impact on him becoming aware of the dangers of anti-doping.
58. Further, we accept the Player thought Mesomorph had a similar stimulant effect to "NoDoz" and because he was unaware Mesomorph contained a prohibited substance, concluded he was justified in using it. Further, the Player was with Mr Raper when he conducted his searches. By default

Mr Raper was the only health professional attached to the team supposedly with experience in anti-doping matters. Thus, it is understandable the Player had an honest but incorrect belief there would not be any anti-doping issues if he continued using Mesomorph.

59. Ultimately, having regard to all the aforementioned factors including the mitigating factors, we have concluded the Player's degree of fault was not as serious as those cases where higher level sanctions have been imposed.
60. In determining the appropriate sanction we also consider it appropriate to take into account a further factor. Counsel for the IRB correctly noted MHA is a specified stimulant only prohibited "*in competition*". It may be used "*out of competition*" during training, provided of course its stimulant effect has subsided by the time of the competition matches. Thus, MHA can be regarded as being among the less serious category of prohibited substances and this is reflected in the sanctioning regime in that there is a flexible sanction for MHA compared to the sanctions for other non specified prohibited substances.
61. As mentioned each case is fact specific, but we consider the case of Duckworth has a strong parallel with this case. Mr Duckworth was a Rugby League player, aged 21. He had previously suffered serious injuries in a car accident and led a physically demanding life as a manual labourer working long hours and attending the gym prior to work early in the morning. He openly took a supplement Jack 3d (which contained the banned substance MHA) for the purpose of "*helping to feel awake and his focus*". On a successful appeal his sanction was reduced to a period of six months ineligibility.
62. Taking into account all the foregoing matters (including the sanction imposed in the Duckworth case), as indicated in our decision dated 27th June 2012, we concluded the period of suspension should be for a period of six months commencing on 17th April 2012 (being the date the Player's provisional suspension commenced) and concluding (but inclusive of) 17th October 2012).

Costs

63. If the Board wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.10, written submissions should be provided to the BJC via Mr Ricketts by 17:00 Dublin time on 24th August 2012, with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 6th September 2012.

Review

64. This decision is final subject to referral to a Post Hearing Review Body (Clause 24.1 TADP) and an appeal to the Court of Arbitration for Sport (Clause 27 TADP). In this regard attention is also directed to Clause 24.2 which sets out the process for referral to a Post Hearing Review Body, including the time limit within which the process must be initiated.

T M Gresson
Chairman

10 August 2012

IOSCIENCE

Supplement

Net Weight: 15.5 grams (one pound)
25 per container

Amount per Serving

SYNTHENOX-CARNOSINE/NITRIC OXIDE
beta alanine, L-citrulline DL-malate

MESOSWELL-CELL VOLUMIZING ATP
di-creatine malate, L-taurine, creatine, sodium
phosphate, agmatine sulfate

NEUROMORPH-NEURO ENERGY
glucoronolactone, methylxanthine, caffeine,
1H-purine-2,6-dione, naltrexone

* Daily Value not established

Other Ingredients: Mannitol, Acesulfame-K, sucralose, silicon dioxide, croscarmellose

Manufactured for
Palm Beach
Information

INNOVATORS OF ADVANCED

MESOMORPH-An individual with a robust, muscular body build caused by the predominance of skeletal muscle developed from the embryonic mesodermal layer. Release the **MESOMORPH** within!

Why is **mesomorph** so effective?

MESOMORPH is the first to deliver FULL CLINICAL DOSES of its key active ingredients, not half amounts typically seen in these types of formulas. **MESOMORPH** also contains clinical amounts of the super supplement **BETA ALANINE** not seen in other powders and **CREATINOL-10-PHOSPHATE** for maximum performance!

Asses tolerance: **MESOMORPH** is a HIGH POTENCY formula that may require a gradual dose increase for some individuals. If you are experienced with beta alanine go right to 1 full scoop (**MESOMORPH** contains 400 mg per serving). If you are not experienced with beta alanine start with 1/2 scoop **MESOMORPH**. If no tingling or discomfort occurs take 1 full scoop on next dose and thereafter. If tingling does occur continue 1/2 scoop for 7-10 days then increase to 1 scoop (or as soon as possible). That warm tingle sensation is just **MESOMORPH** at work. Although it can be strong in some, it is not harmful in any way and will subside once body adjusts.

Suggested use: After tolerance has been determined 40 min prior to workout mix one scoop of **MESOMORPH** with 8-10 oz of water, stir adequately and consume immediately on an empty stomach. On non-workout days consume 1/2 scoop **MESOMORPH** mixed in water on an empty stomach.

Although you will feel **MESOMORPH** from day 1. Best results begin to occur at day 15 and continue to improve up to day 60. After 8-10 weeks it is recommended that you discontinue use of **MESOMORPH** and take at least 8-10 weeks off before resuming use. During this "off period" you may take a non-creatine product such as **PLASMAEN NITRATE** to experience continued progress.

WARNING: As with any supplement check with your physician prior to use. Do not use this product if you have an current or previous medical condition of any kind. Such conditions may include but are not limited to high or low blood pressure, stroke, arrhythmias or palpitations. Any heart, thyroid, or liver condition. Seizures, anxiety or depression, prostate enlargement or palpitations. Any heart, thyroid, or liver condition. Seizures, anxiety or depression, prostate enlargement or inflammation. Do not use if you are nursing or pregnant. Do not use if you are taking an MAOI. If any adverse symptoms occur discontinue use immediately and consult a physician keep out of reach of children. DO NOT take for more than 8-10 weeks without an 8-10 week off period.

*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat or prevent any disease.

STRENGTH **OSTAMINA** **RECOVERY**

Methylhexaneamine (MHA)

What is MHA?

MHA is a stimulant originally derived from the geranium plant but is now mostly synthetically produced. It was first developed as a nasal decongestant in the 1940s but can now be found in dietary or nutritional supplements under many different names other than MHA.



Some products which openly contain, or have been identified in certain countries to contain, MHA or its variants include, Hemo Rage, Jack3d, Crack, USN Anabolic Nitro, ErgoLean Amp 2, DynaPep, Core Zap and C4 Extreme, Nutrimax Burner, NitroX, IBE X-Force, Fusion Geranamine, ClearShot, Black Cats, Musclespeed. Please note this is not an exhaustive list but provides examples of some commercial supplements which contain, or have been identified in certain countries to contain, MHA or its variants.

MHA was placed on the WADA Prohibited List in 2010. As of 1 January 2011, it is classed as a Specified Stimulant prohibited in-competition only. MHA has caused a number of positive cases in Rugby (and other sports) recently for both amateur and professional Players.

What are the effects of MHA?

The stimulant effects are said to be less than amphetamine and ephedrine and slightly stronger than caffeine. MHA is marketed as a pre work-out supplement with thermogenic or stimulant properties and may have mild stimulant effects but there is no publicly available data on its specific mechanism of action, absorption, pharmacokinetics, metabolism or excretion.

Anecdotal evidence suggests the effects of MHA last between 1-3 hours, and that it increases focus, heart rate and productivity whilst other users have reported increased anxiety, nervousness and sweating.

Related substances and other names

MHA has many different variants/names which Players should check for individually if considering the use of any dietary or nutritional supplements. They include but are not limited to:

Methylhexaneamine; Methylhexanamine; DMAA (dimethylamylamine); Geranamine; Forthane; Forthan; Floradrene; 2-hexanamine, 4-methyl-; 2-hexanamine, 4-methyl- (9CI); 4-methyl-2-hexanamine; 1,3-dimethylamylamine; 4-Methylhexan-2-amine; 1,3-dimethylpentylamine; 2-amino-4-methylhexane; Pentylamine, 1, 3-dimethyl-; pelargonium graveolens; pelargonium extract; geranium, geranium oil or geranium root extract.

Warning: In some cases, the labels and ingredient lists on products are **not complete**. Players should also be aware that products marketed under the same brand in different countries may contain different ingredients which may not always appear on the product label.

What is the sanction for a positive test for MHA?

An Adverse Analytical Finding for MHA carries with it a **potential two year sanction** which may be reduced if the Player can establish how MHA entered their system and can present corroborating evidence (that is, from another person or source) that it was not taken to enhance sports performance or mask the use of another Prohibited Substance.

Strict Liability

Players must be aware that, under the policy of strict liability, they are solely responsible for any substance found in their body (regardless of whether the substance was contained in a dietary or nutritional supplement prepared or recommended by team management, medical personnel or other trusted persons and/or whether or not it was listed on the label of the product). Those Players who use dietary or nutritional supplements do so **at their own risk and are advised to exercise extreme caution**.