

**CERTIFIED TRANSLATION FROM THE POLISH LANGUAGE**

File Reference Number 5/S/2012

**ARBITRAL AWARD**

**of the Arbitration Tribunal for Sport  
at the Polish Olympic Committee  
given on February 21, 2013**

Adjudication Panel:

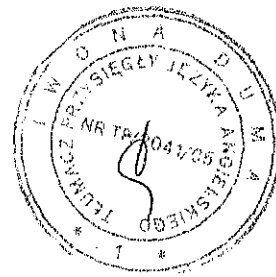
Chairperson - Maria Zuchowicz  
Arbitrator - Piotr Sendeki  
Arbitrator - Paweł Granecki  
Recording clerk - Agata Kruszewska

Having examined on February 21, 2013 the appeal lodged by the World Anti-Doping Agency (WADA) versus the Polish Ice Hockey Federation and Michał Radwański against the decision given on October 19, 2011 by the Games and Discipline Department of the Polish Ice Hockey Federation in the case of Michał Radwański

adjudicates as follows:

**1) The decision of the Games and Discipline Department of the Polish Ice Hockey Federation of October 19, 2011 is partially amended so that player Michał Radwański is sanctioned with a two-year period of ineligibility,**

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- 2) The period of ineligibility of player Michał Radwański until the date of giving this arbitral award is included in the overall period of ineligibility imposed.
- 3) All competitive results obtained by player Michał Radwański during games played from September 25, 2011 through the commencement of the period of ineligibility are disqualified, and all medals, points and sports awards received within such games are forfeited.
- 4) The court fee paid is deemed final.
- 5) Player Michał Radwański is ordered to refund to the World Anti-Doping Agency (WADA) the cost of proceedings in the amount of PLN 1,000 /one thousand/.
- 6) The Polish Ice Hockey Federation is ordered to refund to the World Anti-Doping Agency (WADA) the cost of proceedings in the amount of PLN 3,000 /three thousand/.

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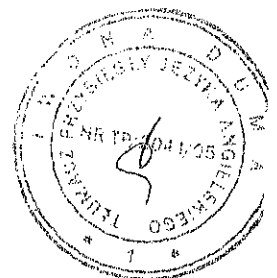
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#### I. The facts

1. Michał Radwański, hockey player of KH Sanok, underwent the doping control tests after a Polish Ice Hockey Federation game on September 25, 2011. He tested positive for a prohibited substance methylhexanamine classified under S6(b) (specified stimulants). The player did not request the analysis of the B-sample.
2. The player argues that he was taking a dietary supplement Oxy Elite Pro for accelerated fat burning. The player argues that he purchased the aforementioned supplement at a shop "Agencja Knockout" in Sanok, in proof whereof he submits a statement of the shop's owner confirming the purchase of the Oxy Elite Pro supplement by that player at that shop. The player argues that he consulted the supplementation with Oxy Elite Pro with a physician in Sanok, in proof whereof he submits a statement of Krystyna Daszyk, MD, of November 20, 2012 to the effect that the physician had become acquainted with the composition and description of the preparation and had found no negative effects on the player's health or substances known to the physician as prohibited by anti-doping regulations. The player also argues that he did not take Oxy Elite Pro to improve his competitive results but admits the intention to reduce his weight by about 4 kg gained during the pre-season period.



3. On October 19, 2011 the Games and Discipline Department of the Polish Ice Hockey Federation sanctioned player Michał Radwański with a one-month period of ineligibility from October 18 to November 17, 2011.

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## II. Jurisdiction of the Tribunal for Sport at the Polish Olympic Committee – admissibility of the appeal.

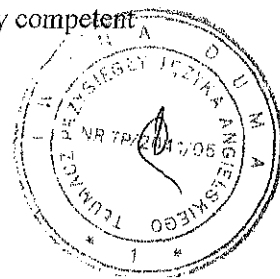
Like any other sports association, the Polish Ice Hockey Federation (PIHF) is obliged to observe the anti-doping regulations adopted by the Commission Against Doping in Sport (CADiS), which is an independent organization to struggle against doping in the Republic of Poland. On April 8, 2004 the Commission adopted the World Anti-Doping Code (“the Code”); it operates under the Sports Act of June 25, 2010 (Journal of Laws No. 127, item 857) applying anti-doping regulations within all kinds of anti-doping tests. Athletes, support crew (coaches, instructors, physicians etc.) as well as other persons who accept the anti-doping regulations as the precondition of participation in the sports competition are bound by those regulations. Basing on the Model Anti-Doping Rules, the Polish sports associations adopt anti-doping regulations, incorporating them in their charters and disciplinary bylaws, and are obliged to observe such regulations. Player Michał Radwański is a member of PIHF, which makes him obliged to observe the anti-doping rules.

Under Article 13.2.2. of the Model Anti-Doping Rules, “In cases involving national-level athletes subordinate to the Commission against Doping in Sport that do not have the right to appeal under Article 13.2.1 (it refers to international-level athletes), the decision may be appealed against to an independent and impartial national appeal body, i.e. the Arbitration Tribunal for Sport at the Polish Olympic Committee.” Under Article 13.2.3. WADA is one of the parties that may lodge appeals with this Tribunal. (f)

It should be stressed that based on the Model Anti-Doping Rules, Polish sports associations undertake to observe the anti-doping regulations and provisions on fighting doping, and also to impose

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individual sanctions; they also recognize the powers of and undertake to cooperate with CADiS and disciplinary bodies. The adoption and implementation of an anti-doping policy is a condition for obtaining financial and/or any other support from the Government of the Republic of Poland. Therefore, it is clear from the regulations mentioned above that the Tribunal is the authority competent



to examine the appeal against the decision of the Federation's disciplinary body and that WADA may lodge an appeal to the Tribunal for Sport at the Polish Olympic Committee.

§ 9 clause 1 of the PIHF Disciplinary Bylaws contains, in the case of transgressions consisting in violation of the anti-doping regulations, an explicit reference to the World Anti-Doping Code, which means that PIHF acknowledges, according to the valid legal provisions including specifically Article 43 clause 6 of the Sports Act of June 25, 2010, the rules of fighting doping in sport, and among them the Model Anti-Doping Rules as an elaboration of the World Anti-Doping Code.

### III. Time-limit for lodging the appeal.

The 21 days' time-limit for lodging the appeal has been kept by WADA pursuant to Article 13.5. WADA was informed that the challenged decision was the only document in the case on June 28, 2012, while the grounds for the appeal were filed on July 18, 2012. This Tribunal is of the opinion that in the circumstances of the case concerned, the information given to WADA on June 28, 2012 sets the starting point of the run of the time-limit for challenging PIHF's decision, as before that date the appellant had not been informed that no additional documents in the case would be provided to WADA, although only the challenged decision had been provided at an earlier date. Notwithstanding the reasoning of the player's attorney that the appellant freely defined the time-limit for lodging the appeal, appraisal

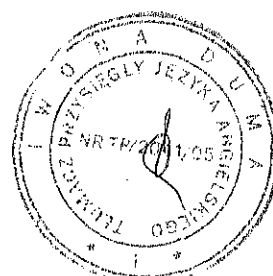
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of the circumstances of keeping that time-limit is the responsibility of this Tribunal. In the opinion of this Tribunal, the information given to WADA on June 28, 2012 sets the starting point of the run of the time-limit for appeal, while the information of May 17, 2012 merely indicates that the Commission *Against Doping in Sport* received no additional documents from PIHF and not that there are no such documents.

### IV. Violation of anti-doping regulations.

In the course of unquestioned anti-doping control tests, the player tested positive for a prohibited substance – methylhexanamine. It is a prohibited substance classified under "S6 (b)" – Specified stimulants in the WADA List of prohibited substances of 2011.

As has been mentioned before, the player argued that the prohibited substance entered his body with the dietary supplement Oxy Elite Plus, which he had been taking to accelerate fat burning.



Therefore, the player violated Article 2.1 of the anti-doping regulations.

V. Decision as to sanction.

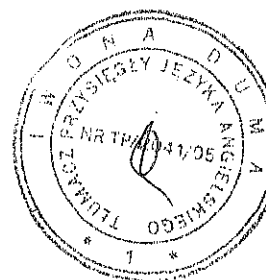
1. WADA challenged the decision of the Games and Discipline Department of PIHF against PIHF and player Michał Radwański with respect to the sanction, arguing that the player should be sanctioned with ineligibility under Article 10.2 of the anti-doping regulations for a period of two years.
2. WADA substantiates the sanction of two years' ineligibility on the basis of Article 10.2, where the sanction for the first violation of the anti-doping

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regulations is ineligibility for 2 years. At the same time WADA argues that there are no grounds for waiving or shortening the sanction.

Namely, pursuant to Article 10.5, the sanction of ineligibility may only be eliminated (absence of guilt or negligence – 10.5.1) or shortened (absence of material guilt or negligence – Article 10.5.2) if the athlete demonstrates exceptional circumstances which, in WADA's opinion, did not occur in this case.

3. This Tribunal finds that beside the fat-reducing properties, the Oxy Elite Pro stimulant also boosts energy, causes mobilization and stimulates. The use of a prohibited stimulant with the above properties aims at improvement of the competitive results.
4. Having analyzed the facts of the case, this Tribunal is of the opinion that the player's disciplinary responsibility is unquestionable. It is beyond dispute that the player took the prohibited substance – methylhexaneamine, and that he did it to reduce fat and this way to improve his competitive results.
5. In the light of WADA's appeal and the challenged decision, it has been the task of this Tribunal to analyze correctness of the sanction lowered pursuant to Articles 10.4 and 10.5 of the anti-doping regulations. Pursuant to Article 10.4, beside demonstrating the manner in which the substance entered his body – which should be treated as demonstrated satisfactorily in the present circumstances – the player would also need to demonstrate that his purpose when taking that substance was not to improve his competitive results. It has to be stated that the player failed to submit this kind of evidence; quite the contrary, analysis of the gathered evidence – including specifically the high content of the prohibited substance in the player's body on



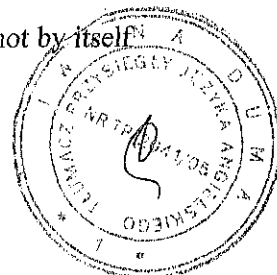
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the day of the game – suggests that the player took that substance to improve his competitive results, and therefore the period of ineligibility cannot possibly be shortened on these grounds. In this respect, the Tribunal has given credence to the statement of WADA expert Dr Olivier Rabin, who indicated the probable time when the prohibited substance was taken, its relatively high content in the sample, and the fact of effective improvement of the competitive results. The circumstances mentioned by Dr Rabin correspond with the player's explanations given during the hearing at this Tribunal.

6. For lift of the sanction of ineligibility or its shortening by half under Article 10.5 to be possible, the athlete has to demonstrate absence of all guilt or negligence on his part (Article 10.5.1) or absence of material guilt or material negligence (Article 10.5.2). In the present case, the player failed to demonstrate such circumstances, which makes it impossible to lift or shorten the ineligibility. The fact that the player purchased the supplement containing methylhexanamine at a supplement shop as a preparation recommended by the shop owner cannot possibly exclude or reduce that player's guilt. A professional athlete should treat the use of dietary supplements with special caution. This fact has been stressed for many years in anti-doping judicial decisions, and information on such issues (also that pertaining directly to methylhexanamine) is generally available on the Internet. An athlete may not rely on the suggestions or opinions of a supplement shop attendant, as such person lacks unquestionable knowledge about the actual composition of the recommended supplement. The same can be said of the medical consultation quoted by the player. With no intention to impair the authority of the physician who consulted the player's taking of the dietary supplement, it has to be stated that there is no evidence whatsoever of that physician's experience

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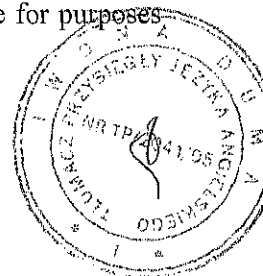
in sports medicine and specifically in the anti-doping regime. It does not follow from the physician's statement submitted in this case that her analysis of the supplement went beyond reading the label where the declared composition of the preparation was stated; besides, the player failed altogether to consult the physician available for the sports club players at the hospital in Sanok, or any other physician. Yet according to an opinion that is well-established in anti-doping judicial decisions, before taking any supplement of this kind the athlete should consult a specialist in sports medicine; the fact that the prohibited substance is not mentioned on the label under the same name as in the WADA List of prohibited substances does not by itself



release the athlete from responsibility for violating the anti-doping regulations. In view of the above, this Tribunal could not reduce the player's sanction for breaking the aforementioned rules. It has to be stated that the player's failure to honestly consult a specialist in sports medicine is indicative of his material negligence. Also other special circumstances that might affect the sanction can hardly be detected in the case. In this situation, the sanction of one-month ban on participation in games, as imposed by the disciplinary board in the first instance, must be seen as glaringly lenient. The Tribunal stresses that the strictly defined sanction for violation of the anti-doping regulations is ineligibility for 2 years, and that nothing but exceptional circumstances may release the athlete from sanction or reduce the sanction. The Tribunal perceives no such circumstances in this case where the evidence is against the player. The Tribunal can also hardly accept the reasoning contained in the grounds for the challenged decision, to the effect that the player's admission that he was using doping and legally purchased a prohibited substance might be treated as special circumstances requiring

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reduction of the sanction. Had the player refused to admit that he was using doping, and had he acquired the prohibited substance illegally, such circumstances might increase his responsibility. Also the reasoning that methylhexaneamine has been added to the WADA list "quite lately" cannot be accepted. As a derivative of tuaminoheptane, methylhexaneamine was declared a prohibited substance already in spring 2009, that is 2.5 years before the anti-doping control testing of player Michał Radwański, and the case of soccer player Jakub Wawrzyniak, examined by CAS in Lausanne and broadly covered by the media, also featured methylhexaneamine, which should have made the athletes sensitive to the dangers involved in the taking of dietary supplements. Disregard of the dangers involved in the taking of stimulants also in recent years is the subject of special interest of the sports circles in relation to the death of a female runner during the 2012 London Marathon after taking a stimulant containing DMAA (which is one of the names of methylhexaneamine). Bodies adjudicating in anti-doping cases should struggle against doping with resolve, with a view not only to integrity of the competition but also to the athletes' life and health. It should also be stressed that the accused player, a mature and experienced athlete who on many occasions represented Poland as member of the national ice hockey team, could be expected to be beyond reproach in terms of ethics, and also to professionally care for cleanness when improving his competitive results. However, player Michał Radwański failed to come up to such expectations; in particular, this Tribunal cannot give credence to the argument that the player was taking the prohibited substance for purposes



other than improvement of his competitive results. For several weeks before the games season, the player could have used a number of permitted weight loss methods (exercises,

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diet); instead, he chose a dietary supplement while he at least should have known (or simply knew) that the preparation may contain prohibited substances.

7. In this situation, the Tribunal has found that WADA's appeal fully deserves being granted, and has amended the decision of the Games and Discipline Department of the Polish Ice Hockey Federation in the case of player Michał Radwański, sanctioned the player with a two-year period of ineligibility from the effective date of the award of the Arbitration Tribunal for Sport at the Polish Olympic Committee, and included the period of ineligibility until the date of giving this arbitral award in the overall period of ineligibility. Further, as a consequence of the sanction imposed on the player under this award, all competitive results obtained by Michał Radwański during games played in the period specified in the conclusion hereof are invalidated. Besides, player Michał Radwański is ordered to refund to WADA the cost of proceedings in the amount of PLN 1,000 (one thousand), and the Polish Ice Hockey Federation is ordered to refund PLN 3,000 (three thousand).

Following settlement of the cost of translation, the remaining amount will be refunded to WADA within the procedure laid down in the Cost Rules of the Arbitration Tribunal for Sport.

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**Repertory No.: 564/03/2013**

*I, the undersigned, Iwona Duma, sworn translator of the English language registered on the list of sworn translators of the Ministry of Justice under number TP/2041/05, hereby certify that the above text is a true and complete translation of the Polish document presented to me.*

*Number of strokes and pages (1125 strokes per page): 17525 strokes (16 pages of translation)*

*Warsaw, March 5, 2013.*

