

Anti-Doping Hearing Panel

of the

International Biathlon Union

AWARD

In the matter of

MS. IRINA STARYKH

The Anti-Doping Hearing Panel, sitting in the composition of Mr. Edward G. WILLIAMS (Chair), Dr. Walter O. FREY and Mr. Juha VIERTOLA, according to Rule 8.1.3 IBU Anti-Doping Rules, handled the case of Ms. Irina STARYKH on March 21, 2014 at the headquarters of the International Biathlon Union in Salzburg, Austria.

Having handled the submissions of the parties and having duly deliberated the facts and the law the Panel renders the following decision:

**I.
Statement of Facts**

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Ms. Starykh (hereinafter referred to as the "Athlete"), an athlete under the jurisdiction of the Russian biathlon federation (hereinafter referred to as "RBU"), was tested in an Out of Competition test initiated by the International Biathlon Union (hereinafter referred to as "IBU") on December 23, 2013 in Pokljuka, Slovenia.

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The "A" sample 2855194 was analyzed in the WADA accredited laboratory in Seibersdorf, Austria, and showed the presence of recombinant erythropoietin (recEPO).

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The results of the analysis of the A sample and the Adverse Analytical Finding (hereinafter referred to as "AAF") was informed by the laboratory of Seibersdorf to the IBU on January 27, 2014 via ADAMS.

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By letter of January 28, 2014 the IBU Secretary General, Ms. Nicole Resch, notified the RBU and the Athlete of the AAF and the provisional suspension from IBU competitions.

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By the said letter of January 28, 2014 the Athlete, the RBU, the Russian Anti-Doping Agency and WADA were notified of

- a. the adverse analytical finding (Article 7.1.4 of the IBU Anti-Doping Rules);
- b. the possible anti-doping rule violation (Article 2.1 IBU Anti-Doping Rules);
- c. the athlete's right to promptly request the analysis of the "B" sample or, failing such request, that the B sample analysis may be deemed waived;
- d. the scheduled date, time and place of the B sample analysis, if the athlete or IBU chooses to request the analysis of the B sample (one of the following days: February 3,4,5,10,11 or 12, 2014);
- e. the opportunity of the athlete and/or the athlete's representative to attend the B sample opening and analysis at the scheduled date, time and place if such analysis is requested;
- f. the fee for B sample analyses (1500 euro);
- g. the possibility to a provisional hearing by sending a written statement until the 4th of February 2014 (Articles 7.6.3 and 7.6.1 IBU Anti-Doping Rules).

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By letter of January 28, 2014 IBU also informed that the results from the analyses were sent to IBU in encoded form. The report was signed by an authorized representative of the laboratory. The results are not consistent with an applicable TUE. An initial review from the WADA International Standards for Testing and for Laboratories was conducted and did not show any apparent departures.

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By email of January 31, 2014 RBU informed IBU that the Athlete will request the B sample analysis. By email of January 31, 2014 IBU postpone the deadline for request to February 3, 2014.

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By email of February 2, 2014 the Athlete requested the opening of the B sample. The Athlete asked to postpone the opening to the period after 26 February 2014 because she informed the wish to be personally present of the opening.

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The opening and analysis of the B sample took place on 3 to 5 March 2014 in the WADA accredited laboratory in Seibersdorf, Austria. Ms. Starykh was personally present. As representatives of the Athlete, were present: Mr. Jean-Marie Kiener, Mr. Sergey Klimenko and Ms Yulia Dykhal.

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The analysis of the sample B 2855194 revealed the presence of recEPO and, therefore confirmed the results of the A sample. The analysis results were reported to IBU on 6 March 2014.

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By letter of March 7, 2014 the Athlete, the RBU, the Russian Anti-Doping Agency and WADA were notified the result of the B sample analysis, which confirmed the AAF.

II. Procedure before the Anti-Doping Hearing Panel

1. The IBU Anti-Doping Hearing Panel

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The IBU Anti-Doping Hearing Panel (hereinafter referred to as "ADHP" or the "Panel") is the competent body to hold the hearings according to Article 8 IBU Anti-Doping Rules, which gives the athletes the right to a fair hearing. Within the framework of the IBU the Panel is the body to decide whether or not, in a given case, an anti-doping rule violation was committed.

According to the Constitution of the IBU Article 11.2 and Article 8.1.8 IBU Anti-Doping Rules, the decisions of the IBU Anti-Doping Hearing Panel can be appealed directly to the Court of Arbitration for Sport in Lausanne, Switzerland.

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Following the Constitution and the Anti-Doping Rules, the IBU Executive Board has established the Panel according to Article 8.1.1 IBU Anti-Doping Rules. It consists of a list of a chairperson and nine other experts with experience in anti-doping. The Chair shall be a lawyer. Each panel member shall be otherwise independent of the IBU. Each panel member will serve a term of four years.

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Although the ADHP is part of the institutional framework of the IBU and renders, in matters of alleged anti-doping rule violations, the final decision for the IBU, it acts in complete independence of the IBU. According to Article 8.1.1 IBU Anti-Doping Rules "*Each panel member shall be otherwise independent of IBU.*"

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The proceedings before the ADHP are contentious trials between the IBU and the athlete concerned as parties. According to Article 8.1.2 IBU Anti-Doping Rules "*the case will be assigned to the IBU Anti-Doping Hearing Panel for adjudication*", which means a decision reached by judges. The *Principles for a Fair Hearing* led down in Article 8.3 IBU Anti-Doping Rules speak of the right of *each party* to present evidence and provide in its various items for a *fair and impartial hearing panel* and other guarantees which apply to judicial proceedings.

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According to the Article 8.1.3 IBU Anti-Doping Rules the chairperson of the IBU ADHP will appoint three members from the panel (which may include the chairperson) to hear each case. At least one appointed member must also be a lawyer. The appointed members must have had no prior involvement with the case and must not have the same nationality as the athlete or other person alleged to have violated IBU Anti-Doping Rules.

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According to the Article 8.1.4 IBU Anti-Doping Rules, hearings will be held in Salzburg as soon as possible and at the absolute latest 30 days after the IBU has sent the complete documentation to the federation of the athlete regarding the positive A sample, if the B sample is waived, or regarding the positive B sample from the laboratory. Federation is responsible to inform the athlete upon the receipt of the complete documentation and to forward this complete documentation to the athlete.

2. The Proceedings prior to the Hearing

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According to Article 8.1.2 IBU Anti-Doping Rules the IBU referred the alleged anti-doping rule violation of the Athlete to the ADHP.

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The Chair of the ADHP, Dr. Christoph Vedder appointed Edward G. Williams, Dr. Walter O. Frey and Mr. Juha Viertola as the particular Panel to hear the case of the Athlete. Dr. Vedder appointed Mr. Williams chair of the Panel. As required by Article 8.1.3 IBU Anti-Doping Rules the Panel members have not been involved in the case previously and do not have the same nationality as the Athlete.

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The Chair of the ADHP determined the hearing/handling to be held on March 21, 2014 in Salzburg.

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By letter of March 11, 2014 the IBU Secretary General, Ms. Nicole Resch, invited the Athlete for a hearing before the IBU Anti-Doping Hearing Panel on Friday, 21 March 2014 at 9.00 at the IBU Headquarters, Peregrinstrasse 14, 5020 Salzburg, Austria. The IBU secretary General also informed that the RBU is allowed to send an observer.

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By said letter of March 11, 2014, IBU and the athlete/representative were requested to submit a written position of their arguments by 19 March 2014, in order for the Panel to prepare their questions.

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By letter of March 16, 2014 the Athlete waived the Hearing. The Athlete wrote: "*Following Art. 8.1.7 of the IBU Anti-Doping Rules I waive herewith the right to a hearing scheduled on March 21, 2014 and acknowledge the Anti-Doping Rule violation and the consequences of this violation in the form of disqualification*".

3. The Hearing/handling and the Submissions of the Parties

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Accordingly, the hearing/handling was held on March 21, 2014 at the headquarters of IBU in Salzburg, Austria. Mr. Williams, Dr. Frey and Mr. Viertola were present.

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The Athlete or the representative of the Athlete did not show up, as the Panel has been informed before the Hearing/handling. The RBU did not send an observer.

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By said letter of March 16, 2014 the Athlete waived the Hearing and admitted having committed an anti-doping rule violation. Athlete wrote:

"I hoped till the end that it was a mistake and the "B" sample analysis would bring a negative result.

I've been analyzing the situation for a long time before the "B" sample was opened and I understood the reason for the initial positive result of the sample analysis. In December 2013 I underwent the cosmetic procedures and now I realize: what happened to me is fully my fault, as I made a mistake.

I am sure that the prohibited substance entered my body because of the cosmetic procedures, namely the injections of the drug "LAENNEC". This drug was recommended to me by my friends. My goal was to undergo a series of cosmetic procedures aimed at the skin resurfacing. I could not even imagine that this drug contains any prohibited substances. It was recommended to me as a very effective, 100% natural drug for beauty maintenance.

The only goal, which I wanted to reach due to the cosmetic procedures, was the improvement of my appearance. I started participating in the IBU World Cup series, appearing on TV, taking part in photo shootings – it goes without saying, I wanted to look better. I did not pursue the goal of improving my sports performance. And I could not imagine that the cosmetic procedures will lead to an Anti-Doping Rule violation. Moreover my individual sports performance was quite good at that time and I did not need to improve it by such means.

This is fully my mistake that I underwent a series of injections without consulting with a doctor of the Russian biathlon team or with other doctors.

I hope that the members of the IBU Anti-Doping Hearing Panel will take into account how complicated my situation is, and make a fair decision."

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IBU was represented with the written submission of March 19, 2014 by Dr. Stephan Netzle. The IBU representative Martin Kuchenmeister was available, if needed.

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IBU submitted that the result of the A sample and the B sample analysis revealed the presence of recombinant Erythropoietin (recEPO) in the Athlete's body. The substance is a prohibited substance listed in the WADA Prohibited List in chapter S2.

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IBU submitted that it has demonstrated the presence of the prohibited substance in the Athlete's sample, which constitutes a violation of the Article 2.1 IBU Anti-Doping Rules.

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IBU requested:

1. The Athlete shall be declared ineligible to compete for the period of two years, starting on the date of the sample collection (i.e. 23 December 2013);
2. All competitive results obtained from the date of the sample was collected (i.e. 23 December 2013) shall be disqualified with all of the resulting consequences; and
3. The Athlete shall bear the costs of the hearing before of the ADHP.

III. In Law

1. Applicable Law

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As the preface to the IBU Anti-Doping Rules indicates "*Anti-Doping Rules, like competition rules, are sport rules governing the conditions under which sport is played. Athletes and other persons accept these rules as a condition of participation and will be bound by them.*"

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As the scope to the IBU Anti-Doping Rules indicates "*Anti-Doping Rules will apply to the IBU, each national federation of the IBU, and each participant in the activities of the IBU or any of its national federations by virtue of the participant's membership, accreditation, or participation in IBU, its member federations, or their activities or Events.*"

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As a participant of the IBU's International events, the Athlete, who is an athlete under the jurisdiction of the RBU, is bound by the IBU Anti-Doping Rules. Therefore, these rules are the law applicable to the case before the Panel.

2. Anti-Doping Rule Violation

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The analysis of the A sample and the B sample collected from an out-of-competition test conducted on the Athlete on December 23, 2013 revealed the presence of recombinant erythropoietin (recEPO).

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According to the 2013 WADA Prohibited List a recombinant erythropoietin (recEPO) is substance prohibited at all times (in-competition and out-of-competition) under class S 2.

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The WADA Prohibited List has been incorporated into the IBU Anti-Doping Rules by virtue of Article 4.1 IBU Anti-Doping Rules.

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The presence of recombinant erythropoietin (recEPO) in the Athletes body constitutes an anti-doping rule violation under Article 2.1 IBU Anti-Doping Rules. According to Article 2.1.1 IBU Anti-Doping Rules, no intent, fault or negligence or knowing use on the Athletes part is necessary, in the particular case. According to Article 2.1.2 IBU Anti-Doping Rules sufficient proof of the anti-doping rule violation has been established by the presence of recombinant erythropoietin (recEPO) in the A sample and in the B sample. The Athlete did neither object to the results of the sample analysis nor did she challenge the validity of the finding by submitting any deviation from the required procedures. The Athlete expressly admitted the anti-doping rule violation.

3. Sanction

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According to Article 10.2 IBU Anti-Doping Rules, the period of ineligibility imposed for a violation of Article 2.1 IBU Anti-Doping Rules (Presence of Prohibited Substances or its Metabolites or Markers) is two (2) years ineligibility, when the violation is first for the Athlete.

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The Panel did not find exceptional circumstances in the sense of Article 10.5 IBU Anti-Doping Rules, which could justify an elimination or reduction of the regular sanction.

4. Commencement of the period of ineligibility

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According to Article 10.9 IBU Anti-Doping Rules, the period of ineligibility will start on the date of the hearing decision providing for ineligibility or, if the hearing is waived, on the date ineligibility is accepted or otherwise imposed.

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According to Article 10.9.2 IBU Anti-Doping Rules, where the athlete promptly (which, in all events, means before the athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by the IBU, the period of ineligibility may start as early as the date of sample collection.

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As the Athlete, after being confronted with the possible anti-doping rule violation by IBU under letter dated January 28, 2014, "*promptly*", i. e. in the letter dated March 16, 2014 admitted the anti-doping rule violation and did not compete since the notification of the AAF, Article 10.9.2 IBU Anti-Doping Rules applies. This article stipulates that in such a situation the period of ineligibility may start as early as the date of the sample collection. Therefore, the period of ineligibility begins i.e. on December 23, 2013.

**IV.
Conclusions**

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The sample taken from the Athlete on the occasion of an out-of-competition test conducted on December 23, 2013 revealed the presence of the prohibited substance of recombinant erythropoietin (recEPO) and, therefore, the Athlete committed an anti-doping rule violation according to Article 2.1 IBU Anti-Doping Rules.

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Therefore, Ms. Irina Starykh is declared ineligible to compete for a period of two years, commencing i.e. on December 23, 2013.

V. Decision

On these grounds the Panel decides:

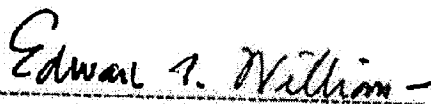
Ms. Irina Starykh is ineligible to compete for a period of two years, commencing i.e. on December 23, 2013;

All competitive results of Ms. Irina Starykh obtained from the date of the sample was collected (i.e. 23 December 2013) are disqualified with all of the resulting consequences; and


All Parties bear their own costs of the hearing/handling of the ADHP.

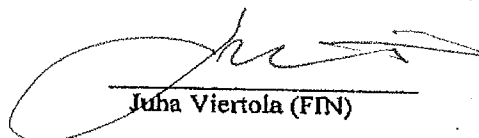
The Anti-Doping Hearing Panel

July 14, 2014



Edward G. Williams, Esq.
Chair of the Panel


Walter O. Frey, MD (SWI)


Juha Viertola (FIN)