

NATIONAL ANTI-DOPING PANEL

Before:

Paul Gilroy QC
(Chairman)
Dr Terry Crystal
(Specialist Member)
Dr Kitrina Douglas
(Specialist Member)

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES
OF THE BRITISH WRESTLING ASSOCIATION AGAINST VAHID HOSSEINPOOR**

Between:

UK Anti-Doping
and
Vahid Hosseinpour

Anti-Doping Organisation

Respondent

FINAL DECISION OF THE ANTI-DOPING TRIBUNAL

1. **INTRODUCTION**

- 1.1 This is the final decision of the Anti-Doping Tribunal convened under Article 8 of the Anti-Doping Rules of the British Wrestling Association ("BWA") to determine a charge brought against Mr Vahid Hosseinpour ("the

Respondent”) in respect of the commission of a Doping Violation contrary to Article 2.1 of the BWA’s Anti-Doping Rules.

1.2 The BWA is the National Governing Body for the sport of Wrestling in the United Kingdom. By resolution approved by the Council of the BWA on 19 November 2008, the BWA adopted the UK Anti-Doping Rules published by the Drug Free Sport Directorate of UK Sport as amended from time to time. References in this Decision to “the Anti-Doping Rules”, “the Rules”, “the UKAD Rules” and “the BWA Anti-Doping Rules” shall, unless otherwise stated, be read as being coterminous.

1.3 Article 1.2.1 of the UKAD Rules provides that the Rules apply (inter alia) to all wrestlers who compete in such capacity in Events, Competitions and other activities organised, convened, authorised or recognised by the BWA. Any wrestler who competes in a BWA recognised event is therefore subject to the UKAD Rules under the jurisdiction of the BWA.

1.4 Article 1.2.2 of the UKAD Rules provides:

“[...] to be eligible to participate (in the case of an Athlete) [...] in any Event, Competition or other activity organised, convened or authorised by the BWA [...] a person must agree to be bound by and to comply with these Rules. Accordingly, [...] by participating [...] an Athlete shall be deemed to have agreed:

a) To be bound by and to comply strictly with these Rules (without prejudice to any other anti-doping rules applicable to him/her).”

1.5 The Respondent was at all material times subject to the UKAD Rules by virtue of his participation in the BWA British Senior Wrestling Championships on 11 May 2014, a Competition organised, convened and authorised by the BWA.

- 1.6 Article 2.1 of the UKAD Rules provides that the following constitutes a Doping Offence for an Athlete:

"The presence of a Prohibited Substance or its Metabolites or their Markers in his/her Sample, unless the Athlete establishes that the presence is consistent with a Therapeutic Use Exemption ("TUE") granted in accordance with Article 4".

- 1.7 The facts upon which the charge against the Respondent is based can be summarised as follows:

1.7.1 Pursuant to the UKAD Rules, UKAD conducted an In-Competition Test on the Respondent at the BWA British Senior Wrestling Championships at the English Institute of Sport, Sheffield, on 11 May 2014, ("the Event"), after he competed in the men's 97kg weight category.

1.7.2 The Respondent was selected to provide a Sample at the Event. He provided a urine sample which was split into two separate bottles, (namely "the A Sample", and "the B Sample").

1.7.3 Both samples were transported to the World Anti-Doping Agency ("WADA") accredited laboratory at the Drug Control Centre, Kings College London ("the Laboratory").

1.7.4 The A Sample was analysed in accordance with the procedures set out in WADA's International Standard for Laboratories ("ISL"). Analysis of the A Sample returned an Adverse Analytical Finding for 3-hydroxy-4-methoxytamoxifen (a metabolite of tamoxifen).

1.7.5 Tamoxifen is classified as a Hormone and Metabolic Modulator under S4 of the WADA 2014 Prohibited List.

1.7.6 UKAD is required pursuant to the UKAD Rules to carry out the process of Results Management in relation to potential anti-doping rule violations that arise in respect of athletes who are subject to the UKAD Rules.

1.7.7 The Respondent does not (and did not at the material time) have a TUE that would justify the presence of the relevant Prohibited Substance.

1.7.8 UKAD determined that there had been no departure from the ISL and that the Respondent had a case to answer in respect of a charge that he had committed an Anti-Doping Rule Violation contrary to Article 2.1 of the UKAD Rules.

1.8 The Tribunal, made up of Mr Paul Gilroy QC, Dr Terry Crystal and Dr Kitrina Douglas held a Hearing on the charge in Manchester on 4 August 2014. In addition to the members of the Tribunal, the Hearing was attended by the Respondent, Ms Angie Farrell (the Respondent's Advocate/Supporter), and Mr Graham Arthur and Mr Tony Jackson of UKAD.

2. **PROCEDURAL HISTORY**

2.1 UKAD charged the Respondent with a violation of Article 2.1 of the UKAD Rules by way a Notice of Charge dated 3 June 2014 ("the Notice of Charge"), explaining how and why he was subject to the UKAD Rules, and the basis of the Notice of Charge.

2.2 In the Notice of Charge the Respondent was informed that, in accordance with Article 7.7 of the UKAD Rules, with immediate effect he was provisionally suspended from participating in all competitions, events or other activities that are organised, convened, authorised or recognised by the BWA pending resolution of the Charge.

2.3 The Respondent informed UKAD by telephone on 13 June 2014 that he accepted the Laboratory's finding in respect of the A Sample and waived his right to have the B Sample analysed. He admitted the charge in respect of the presence of tamoxifen in the A Sample. He explained that he had taken tamoxifen based on medical advice and that he would seek supporting information from the relevant medical personnel to support that claim.

2.4 On 19 June 2014, the Respondent advised UKAD by e-mail that the Consultant from whom he was seeking the supporting information was away but submitted an undated letter from his GP which stated as follows:

"I am just writing to confirm that Mr Hosseinpoor came to see me with a lump in his breast region. He was examined and it was felt he had unilateral gynaecomastia. He had high concerns that this may be cancer and therefore was referred to the breast cancer care unit. He has been reviewed by the breast cancer surgeons since the referral.

2.5 On 2 July 2014, the Respondent requested by e-mail that this matter be resolved by way of a hearing before the National Anti-Doping Panel ("NADP").

2.6 On 3 July 2014, the charge was referred to the NADP for adjudication pursuant to Article 8.1 of the UKAD Rules.

2.7 The Tribunal Chairman issued Directions for the further conduct of this matter by way a telephone Directions Hearing on 9 July 2014. During that Hearing it was indicated that the Respondent would not be contesting the Charge and that at the hearing he would be offering mitigation as to the appropriate level of sanction. Directions were given for the convening of (and preparation in respect of) the final Hearing, including the filing by the Respondent of a witness statement and the mutual exchange between the parties of Skeleton Arguments.

2.8 For the purposes of the final Hearing, the Tribunal and the parties were provided with copies of the following documents:

2.8.1 Witness Statement dated 28 July 2014 of Nick Wojek, Head of Science and Medicine for UKAD;

2.8.2 Witness Statement (together with Exhibit), dated 21 July 2014 of Tony Josiah, Legal Directorate UKAD;

2.8.3 Analysis Result Record dated 28 May 2014 produced by the Drug Control Centre, King's College London;

2.8.4 Document pack to accompany Analysis Result Record re: Authorised Test Number: M - 231706424; Sample ID: A1113087, dated 29 May 2014;

2.8.5 Qualitative Analysis Report dated 23 May 2014;

2.8.6 Review of Adverse and Atypical Analytical Findings dated 28 May 2014;

2.8.7 UKAD Initial Review Following an Adverse or Atypical Analytical Finding dated 29 May 2014;

2.8.8 Report of Doping Control Officer ("DCO") dated 11 May 2014;

2.8.9 Transport Documents (miscellaneous)

2.8.10 Supplementary Report Form dated 12 May 2014;

2.8.11 Doping Control Form dated 11 May 2014;

2.8.12 Entry Exit Log dated 11 May 2014

2.8.13 Email exchange between Tony Josiah and Paul Ouseley (Results Officer, UKAD);

2.8.14 WADA International Standard for Laboratories (January 2012);

2.8.15 UKAD Scientific Review Expert Group Proforma Review of Adverse Analytical Finding signed by Professor Brendan Buckley (2 June 2014);

2.8.16 Updated Statement of the Respondent provided via his Representative, Ms Angie Farrell on 25 July 2014;

2.8.17 One page extract from document concerning breast cancer under the heading "Gynaecomastia";

2.8.18 Notice of Charge dated 3 June 2014;

2.8.19 UKAD Summary of Case dated 16 July 2014;

2.8.20 E-mail dated 13 June 2014 from Jason Torrance (UKAD) to the Respondent;

2.8.21 E-mail dated 2 July 2014 from the Respondent to Graham Arthur requesting referral to the NADP;

2.8.22 Respondent's response dated 19 June 2014 to the Notice of Charge;

2.8.23 E-mail confirming BWA adoption of UKAD Rules dated 19 November 2008;

2.8.24 BWA Anti-Doping Rules;

2.8.25 WADA 2014 Prohibited List International Standard, and

2.8.26 Written Submissions on behalf of UKAD dated 31 July 2014.

2.9 During the course of the final Hearing, the Respondent also provided a bottle containing tamoxifen tablets, and the Tribunal was shown a photograph on the Respondent's mobile phone depicting the box in which one of the bottles of tamoxifen he had obtained had been sent.

3. **THE ISSUES**

3.1 In the light of the Respondent's admission of the relevant Anti-Doping violation, the only live issue for determination by the Tribunal was the question of sanction in respect of the admitted Charge.

3.2 Article 10.2 of the UKAD Rules provides that for an Anti-Doping Rule Violation under Article 2.1 that is the Participant's first violation a period of Ineligibility of two years shall be imposed, unless the conditions for eliminating or reducing the period of Ineligibility (as specified in Article 10.5) are met. As explained below, sanction can also be mitigated if the conditions under Article 10.4 are met.

4. **THE TRIBUNAL'S DECISION**

4.1 The Respondent gave evidence. He is currently 29 years of age (date of birth 26 October 1984).

4.2 The Respondent has been wrestling since childhood. His main occupation is as a carer but he wrestles on a professional basis. He is also a wrestling coach.

4.3 The Respondent provided the Tribunal with a short statement in the following terms:

"I have been having problems with my swollen and painful breast for a while and because we had a history of breast cancer in our family, I went to see

my GP and asked my doctor to refer me to a specialist to make sure that I have not got any problem which relates to a breast cancer. After visiting my Specialist, I was told this is not a dangerous situation and to reduce the pain and swelling, I can take tamoxifen. I would like to mention the sentence my doctor used: (I have not told you anything, if you take this medicine for a while your pain and swelling will disappear). I do not want to blame my doctor as her reason to introduce this medicine was only helping me to get rid of the pain I had, and I you see in the brochure I have forwarded you, mentions that this medicine reduce the pain and swelling. At the end, I would appreciate if you could take this matter as a lack of understanding of keeping myself up to date with the list of illegal cases, and help me to stay in my sport have been doing for the last 20 years."

4.4 In his written submission, the Respondent stated as follows:

"I, Vahid Hosseinpour want to state that in February 2014 I (started) taking (tamoxifen). Not for performance enhancement reasons but for medical reasons following advice from medical professional Dr Bromley who based at Royal Oldham Hospital, and was the Specialist treating me for my suspected breast cancer. She advised me verbally that (tamoxifen) is used for my condition and I can buy it from the Internet and she also provided me with a booklet about the drug. Her Secretary recommended that all patients taking this drug buy it from the internet because the NHS does not fund it. I was unaware at the time of taking (tamoxifen) that it was a banned drug and as I was told by my specialist that this drug is used to treat my condition I honestly believed it was ok".

4.5 It was the Respondent's evidence that his treating Consultant had merely advised the use of tamoxifen and had not prescribed it, that a friend of his had obtained it (two bottles) on the internet, that he had not checked whether it was a Prohibited Substance, and that he had never read the BWA (UKAD) Anti-Doping Rules. When he was asked to record on the Doping Control Form to disclose the medication he was taking it simply had not occurred to him to mention that he was taking tamoxifen.

4.6 Article 10.4 of the UKAD Rules is concerned with *"Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specified Circumstances"*.

Article 10.4.1 provides:

"10.4.1 Where the Participant can establish how a Specified Substance entered his/her body or came into his/her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or to mask the Use of a performance-enhancing substance, and it is the Participant's first violation, the period of Ineligibility established in Article 10.2 shall be replaced with, at a minimum, a reprimand and no period of Ineligibility, and at a maximum a period of Ineligibility of two (2) years".

Article 10.4.2 states:

"10.4.2 To qualify for any elimination or reduction under this Article 10.4, the Participant must produce corroborating evidence in addition to his/her word that establishes, to the comfortable satisfaction of the hearing panel, the absence of an intent to enhance the Athlete's sport performance or mask the Use of a performance-enhancing substance. The Participant's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility."

4.7 Article 10.5 of the UKAD Rules is concerned with *"Elimination or Reduction of the Period of Ineligibility Based on Exceptional Circumstances"*.

Article 10.5.1 provides:

"If a participant establishes in an individual case that he/she bears No Fault or Negligence for the Anti-Doping Rule Violation Charge, the otherwise applicable period of ineligibility shall be eliminated. When the Anti-Doping

Rule Violation Charge is an Article 2.1 violation, the athlete must also establish how the Prohibited Substance entered his/her system in order to have a period of ineligibility eliminated....”

Article 10.5.2 states:

“If a participant establishes in an individual case that he/she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation Charge, then the period of ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one half of the minimum period of ineligibility otherwise applicable....When the Anti-Doping Rules Violation charged is an Article 2.1 violation, the Athlete must also establish how the Prohibited Substance entered his/her system in order to have the period of Ineligibility reduced”.

4.8 The terms “No Fault or Negligence” and “No Significant Fault or Negligence” are defined in the Anti-Doping Rules as follows:

“No Fault or Negligence

The Athlete’s establishing that he or she did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method.

No Significant Fault or Negligence

The Athlete’s establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the Anti-Doping Rule Violation”.

4.9 Accordingly, in order to take advantage of Article 10.4, it is necessary for the Respondent, essentially, to establish how the relevant Substance

entered his body and that such Substance was not intended to enhance his sport performance or to mask the Use of a performance-enhancing substance, and to do so by producing corroborating evidence to that effect.

4.10 In order to take advantage of either Article 10.5.1 or Article 10.5.2, the onus is upon the Respondent to establish both:

(i) that he bears "*No Fault or Negligence*", or "*No Significant Fault or Negligence*"; and

(ii) how the Substance entered his system.

4.11 UKAD submitted that as tamoxifen is a Specified Substance, the Respondent could mitigate the standard two year sanction using both Articles 10.4 and 10.5 of the UKAD Rules. In order to meet the requirements of Article 10.4, the Respondent would need to show how the tamoxifen entered his system and that it was not intended to enhance his sporting performance. If he could satisfy these requirements, the level of sanction imposed could range from a two year period of ineligibility to no period of ineligibility and a warning and a reprimand. UKAD's position was that the Respondent had not provided sufficient evidence to satisfy the requirements of either Article 10.4 or Article 10.5 of the UKAD Rules. He claimed that he was advised to use tamoxifen by a specialist to assist in the treatment of a medical condition. He provided neither a written statement to this effect from the specialist in question, nor sufficient evidence regarding his medical condition. Without providing such evidence, UKAD did not accept that the requirements of ADR Articles 10.4 or 10.5 could be met. UKAD's position was that a period of ineligibility of two years must be imposed upon the Respondent.

4.12 The Respondent submitted that he was totally against the use of drugs in sport. He had acted in good faith on the basis of the medical advice of his treating Consultant. At no stage had he used drugs in order to cheat in his chosen sport.

5. **DETERMINATION OF THE CHARGE**

- 5.1 The Respondent has been charged with a Doping Offence under Article 2.1 of the UKAD Rules.
- 5.2 The Respondent accepted that the Prohibited Substance was present in his Sample and further that he did not have a TUE granted in accordance with Article 4.
- 5.3 The Tribunal found that the Respondent committed an Anti-Doping Violation contrary to Article 2.1 of the UKAD Rules.

6. **CONSEQUENCES**

6.1 The Tribunal is only given discretion to mitigate the Consequence prescribed by Article 10.2 in the following narrow circumstances:

- (i) where the Athlete can establish in accordance with Article 10.4 of the UKAD Rules how a Specified Substance entered his/her body or came into his/her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or to mask the Use of a performance-enhancing substance;
- (ii) where the Athlete establishes No Fault or Negligence in accordance with Article 10.5.1 of the UKAD Rules, and
- (iii) where the Athlete establishes No Significant Fault or Negligence in accordance with Article 10.5.2 of the UKAD Rules.

6.2 In order to rely on Article 10.4, the Respondent must establish:

- 6.2.1 on the balance of probabilities, how the tamoxifen got into his sample, and

- 6.2.2 to the comfortable satisfaction of the Tribunal, that the tamoxifen was not intended to enhance his sporting performance.
- 6.3 Tamoxifen is undoubtedly a form of medication which is used to treat symptoms of gynaecomastia. It is a form of medication which medical professionals undoubtedly recommend for the treatment of such symptoms.
- 6.4 However, the Respondent failed to provide any corroborative evidence to explain how he came to be in possession of this prescription-only medication, and how and why he came to use it. In the Tribunal's view there could be no valid explanation for the Respondent failing to obtain the briefest letter from his Consultant explaining how it came to be that the Respondent was advised to take tamoxifen.
- 6.5 The Tribunal concluded that the Respondent had failed to discharge the burden of establishing how tamoxifen entered his body. He produced no evidence, beyond his own word, to corroborate his claim that he took tamoxifen upon recommendation from a doctor.
- 6.6 Further, even if the Respondent was using tamoxifen in connection with a medical condition or the symptoms of such a condition, in the absence of first hand medical evidence it is quite impossible to know what dosage he required in order for his usage of that Substance to be deemed to be for therapeutic use. It is therefore impossible for the Tribunal to be "comfortably satisfied" that he was using tamoxifen for therapeutic and not performance-enhancing reasons.
- 6.7 In short, the Respondent failed to satisfy the Tribunal how tamoxifen entered his body and that that Substance was not intended to enhance his sport performance or to mask the Use of a performance-enhancing Substance. If that were the case, the Tribunal could not understand why the Respondent could not produce either (a) direct medical evidence from the specialist who he claimed had recommended the medication in question, or (b) proof of it having been prescribed for him.

6.8 In the judgment of the Tribunal, therefore, the avenue to mitigate Consequences under Article 10.4 of the UKAD Rules is not available to the Respondent.

6.9 The Tribunal then considered Articles 10.5.1 of the UKAD Rules (no fault or negligence), and Article 10.5.2 (no significant fault or negligence) and concluded that the Respondent could avail himself of neither on the facts of this case. Without limitation:

6.9.1 The Respondent had a number of "*Core Responsibilities*" under the UKAD Rules, including (pursuant to Article 1.3.1):

"a. [to acquaint himself, and to ensure that each Person (including medical personnel) from whom he/she takes advice is acquainted, with all of the requirements of these Rules, including (without limitation) being aware of what constitutes an Anti-Doping Rule Violation and of what substances and methods are on the Prohibited List; and

b. to comply with these Rules in all respects, including:

i. taking full responsibility for what he/she ingests and uses;

ii. ensuring that any medical treatment he/she receives does not infringe these Rules".

The Respondent was invited to read Article 1.3.1 of the UKAD Rules during the course of the final Hearing. It was the first time he had even been aware of let alone read the Core Responsibilities. Ignorance of their existence could under no circumstances afford the Respondent any basis upon which to mitigate sanction.

6.9.2 Tamoxifen has significant performance enhancing properties. The

Tribunal accepted the submission of UKAD that the Respondent failed (for example) to:

6.9.2.1 attempt to ascertain whether or not tamoxifen was a Prohibited Substance;

6.9.2.2 take any steps to ensure that he competed without having an Prohibited Substance in his system;

6.9.2.3 discuss the use of tamoxifen with the BWA or any authorised coach, official or Event representative;

6.9.2.4 discuss its use with UKAD;

6.9.2.5 seek advice from any UKAD officer;

6.9.2.6 investigate the availability of a TUE (even if there would have been little likelihood of obtaining such an exemption); or

6.9.2.7 make any disclosure of his use of tamoxifen on his Doping Control Form.

6.10 The Tribunal concluded that there was no justification for any elimination of or reduction from the otherwise applicable period of Ineligibility of two years.

6.11 Accordingly, the period of Ineligibility imposed on the Respondent is one of two years.

6.12 In accordance with Article 10.9.3 of the UKAD Rules, the period of Ineligibility shall run from 3 June 2014 and shall end at midnight on 2 June 2016. During the period of Ineligibility, in accordance with Article 10.1 of the UKAD Rules, the Respondent shall not be permitted to participate in any capacity in a competition or other activity (other than authorised Anti-

Doping Education or Rehabilitation programmes) organised, convened or authorised by the BWA or any body that is a member of, or affiliated to, or licenced by the BWA.

7. **SUMMARY**

Accordingly, for the reasons stated above, the Tribunal makes the following Decision:

- 7.1 a Doping Offence contrary to Article 2.1 of the UKAD Rules has been established;
- 7.2 the Respondent shall not, until midnight on 2 June 2016 be permitted to participate in any capacity in a competition or other activity (other than authorised Anti-Doping Education or Rehabilitation programmes) organised, convened or authorised by the BWA or any body that is a member of, or affiliated to, or licenced by the BWA.

8. **RIGHTS OF APPEAL**

- 8.1 In accordance with Article 13.4 of the UKAD Rules, the following parties shall have the right to appeal against this decision to the NADP:
 - 8.1.1 the Respondent;
 - 8.1.2 the BWA;
 - 8.1.3 UKAD;
 - 8.1.4 the International Federation, and
 - 8.1.5 WADA.

In the absence of any such appeal, this decision shall be final and binding on all of the above Persons.

8.2 The Respondent, BWA and UKAD have 21 days from receipt of this decision within which to lodge an appeal.

8.3 The International Federation has 10 days from receipt of this decision to request the file and then 21 days after receipt of that file to lodge an appeal.

8.4 WADA has the later of:

8.4.1 21 days after the last day that any other party could appeal (including the International Federation); or

8.4.2 21 days after WADA request the file;

within which to lodge an appeal.

8.5 Any party that wishes to exercise such rights must file a Notice of Appeal with the NADP in accordance with the time limits prescribed above.



Paul Gilroy QC

Dr Terry Crystal

Dr Kitrina Douglas

Signed on behalf of the Tribunal on 6 August 2014



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