



# **Anti-Doping Panel Decision**

In the matter of  
**Mr. Sirianis MENDEZ HERNANDEZ**  
(Cuba)

**13 September 2010**

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**FEDERATION INTERNATIONALE DE VOLLEYBALL**

Eduouard-Sandoz 2-4 – 1006 Lausanne SWITZERLAND

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## THE FIVB ANTI-DOPING HEARING PANEL

Composed by

- Prof. Bruno Manzella      President      (Italy, Disciplinary Commission President)
- Prof. Manfred Holzgraefe      Member      (Germany, Medical Commission Member)
- Mr Ben Slimane      Member      (Tunisia, Disciplinary Commission Member)

At the hearing which took place on 2 September 2010, 5 pm **Swiss time**, via telephone conference,

The FIVB Anti-Doping Panel discussed the case identified as 2481943

### INTRODUCTION

1. On 24 February 2010 the FIVB was notified by the ZBA Instytut Sportu Laboratory (Poland), regarding an Adverse Analytical Finding concerning the A-sample 2481943, which was found to contain the substance **Pseudoephedrine** in an amount of 186.99 mg/ml ; this substance is prohibited in an amount higher than 150mg/ml and belongs to the category S6.2 (specified stimulants) of the 2010 WADA Prohibited List.
2. The above mentioned sample was taken In-competition on 16 January 2010 at a game of the Polish Super League -Plus Liga- in Poland and belongs to the player Mr Sirianis MENDEZ HERNANDEZ, who at that time was a player of the Club Jadar Sport SA.
3. After having been informed by his National Federation about his right to request the B sample to be analyzed, to attend the sample opening personally or via a representative and to present his official statement, the concerned athlete asked the analysis of the B-sample and submitted his position in writing.
4. On 13 August 2010 the Polish National Federation, enclosing Appendices, informed the FIVB that Mr Hernandez's contract with his

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club had been dissolved already in March with immediate effect and that the athlete was not under contract with any club taking part in competitions under the Polish VB Federation's jurisdiction and, therefore, Mr Hernandez was no longer under the authority of either the Polish federation or the Polish NADO.

5. In the meantime, on 9 August 2010 the athlete had contacted the FIVB inquiring about the status of his case, and provided FIVB with several documents concerning his adverse analytical finding, his medical condition as well as his correspondence with the Polish Federation.
6. In his written statement and during the hearing, the athlete submitted *inter alia* the following:
  - a. He was diagnosed with asthma since his childhood in Cuba where the doctors prescribed him various drugs; when he later started playing volleyball and joined his National teams, he received the appropriate TUE as required;
  - b. When he arrived in Poland, the trainer told him that the club doctor would take care of the appropriate TUE. Therefore he thought the appropriate paperwork had been completed;
  - c. Pseudoephedrine was added to the doping list beginning from 1<sup>st</sup> January 2010 and no one told him or his teammates or even alerted them of this change or of the fact that there was a new doping list. In fact, at the beginning of the 2009-2010 season he was given by the club the 2009 Prohibited List which did not contain pseudoephedrine.
  - d. He took Nasal Decongestant pills, which contained pseudoephedrine, before the game of 16 January 2010 because he felt sick and he could not receive sufficient medical assistance from his club regarding the substances he was allowed to consume.

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7. The anti-doping hearing via telephone conference was attended, aside from the Anti-Doping Hearing Panel, by the athlete, Mr Sirianis Mendez Hernandez, his legal counsel Ms De'anna Hines, the athlete's manager & fiancée Ms Judi Arbuckle and in the presence of the FIVB Anti-Doping Administrator Ms Erika Riedl as well as the FIVB's legal counsel Mr Andreas Zagklis.

#### LEGAL CONSIDERATIONS

1. *Preliminarily* the Anti-Doping Panel shall address its jurisdiction to hear and to decide the present case:
  - a. The Polish National Federation, without convincing justification did not take any decision in this matter during the period between January and August 2010 and thereafter declared its lack of jurisdiction since the athlete was no longer playing in Poland and had left the Polish territory since March. However and under the applicable regulations, any doping case in the volleyball world must be reviewed and cannot remain *undecided*;
  - b. According to art. 8.2.2. *in fine* of the FIVB Medical Regulations, if for whatever reason the completion of hearing is delayed beyond three months, FIVB may elect to bring the case directly before the FIVB Anti-Doping Panel at the responsibility and at the expense of the National Federation.
2. According to the WADA 2010 Prohibited List, Pseudoephedrine has been reintroduced as substance prohibited in-competition in class S6. - *Stimulants*.
3. According to art. 2.1. of the FIVB Medical Regulations and in accordance with the World Anti-Doping Code, the presence of this substance in an

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athlete's bodily specimen constitutes an anti-doping rule violation, sanctioned as per art. 9.1 of the FIVB Medical Regulations.

4. The athlete took Claritin D, a common over-the-counter medication containing Loratadine & Pseudoephedrine, before the game in January 2010 and on several other occasions after November 2009. Under Article 2.1.1 of the FIVB Medical Regulations "It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. *Athletes* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their *Samples*. Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an anti-doping violation under Article 2.1." The Panel finds that the Player should have reviewed the 2010 prohibited list before using this medication; the fact that he reviewed the 2009 list and started using the same substance in 2009 without testing positive, does not release him from his clear responsibility to review the list on an annual basis. (see also CAS OG 06/001, WADA vs USADA, USBSF, Lund).
4. Nevertheless, the following can be considered as mitigating circumstances can be:
  - The player was honest and straightforward in his submissions; he did not try to hide anything and admitted his responsibility;
  - With reference to the asthma and other health problems, the produced medical certificates are sufficient to exclude an attempt to enhance his performances and therefore the Panel can apply the sanctions provided in Article 9.4 of the FIVB Medical Regulations ("At a minimum, a reprimand and no period of *Ineligibility* from future *Events*, and at a maximum, two (2) years of *Ineligibility*."

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5. Considering the principle of proportionality in calculating the sanction to be imposed and the fact that this is the athlete's first anti-doping rule violation

**Taking the above into consideration**

**The FIVB ANTI-DOPING HEARING PANEL**

**Concludes**

1. The player SIRIANIS MENDEZ HERNANDEZ (Cuba) has committed an anti-doping rule violation (presence of the prohibited substance pseudoephedrine in his bodily specimen), according to art. 2.1. of the FIVB Medical Regulations
2. A sanction of three (3) months of ineligibility shall be imposed on the player SIRIANIS MENDEZ HERNANDEZ (Cuba), according to art. 9.4. of the FIVB Medical Regulations.
3. Given the delay in the process solely attributed to the Polish Volleyball Federation, the period of ineligibility shall commence on 17 August 2010, date that the FIVB initiated its own results management process.

Decided in Lausanne, on 13 September 2010

Prof. Manfred Holzgraefe	Prof. Bruno Manzella	Mr Ben Slimane
Member	President	Member