

FIVB

Disciplinary Panel

Decision

In the matter of
Ms. Jinling CHU
(China)

10 July 2013

THE FIVB DISCIPLINARY PANEL

Constituted in accordance with Article 8.1.2

of the FIVB Medical Regulations

and composed by

Ms. Margaret Ann Fleming	(Scotland) Disciplinary Panel Vice-Chair acting as Chairwoman
Mr. Mounir Ben Slimane	(Tunisia) Disciplinary Panel Member
Dr. Annie Peytavin	(France) Medical Commission Assistant Secretary

At the hearing which took place via telephone conference
on 9 July 2013, 11 A.M. Swiss Time, heard the case identified as n. 2700361:

FACTUAL BACKGROUND

1. On 4 June 2013, the FIVB was notified through the Anti-Doping Administration and Management System (ADAMS) that the WADA-accredited Laboratory in Bangkok, Thailand regarding an Adverse Analytical Finding concerning the A-sample 2700361, which contained the prohibited substance Hydrochlorothiazide.
2. The above-mentioned urine sample was taken in-competition on 3 May 2013 in Daclac (Vietnam) during the Volleyball 2013 Asian Women's Club Championship and belongs to the athlete Ms. CHU Jinling (Chinese, born 29 July 1984, hereinafter the "Athlete") who plays for the Guangdong Evergrande Women's Volleyball Club (hereinafter the "Club").
3. After having received a copy of the doping control form by the Asian Volleyball Confederation, on 12 June 2013 the FIVB contacted the Chinese Volleyball Association ("CVA") and through it informed the Athlete of her right to request the analysis of the B sample and to attend the opening thereof.
4. By letter of 18 June 2013 the CVA, on behalf of the Athlete, sent to the FIVB a statement on the case and also asked to have the B Sample opened and analyzed.

5. By letter of 24 June 2013 the CVA, on behalf of the Athlete, sent to the FIVB an additional statement on the case and informed FIVB that the Athlete had decided to waive her right to have the B Sample opened and analyzed.
6. The statement reads in relevant part as follows:

*“Following thorough investigation into the case of Adverse Analytical Finding (AAF) of Ms. CHU Jinling’s A sample, we would like to explain here the source we have found that led to this unfortunate finding. During the 2013 Asian Women’s Club Championship held in Vietnam this May, all members of our representing club Guangdong Evergrande Women’s Volleyball Club strictly followed the arrangement of the Organizing Committee all the time, taking their three meals a day in designated dining place, and all our coaches, team doctor, and officials never gave to any of our players any substances on the WADA’s Prohibited List. Then after intensive checks with Ms. CHU Jinling herself, we found that Ms. CHU privately purchased some online diet food in order to lose her weight prior to the tournament without notifying the team officials including team doctor and she had taken Progesterone, loratadine and the diet food during the tournament. **Now laboratory testing by Food and Drug Anti-Doping Laboratory of China Anti-doping Agency on the diet food collected from Ms. CHU found hydrochlorothiazide compound in it.***

Given that the source of AAF in Ms. CHU’s A sample has been verified, we, after close consultation with FIVB Honorary Life President WEI Jizhong, here explain and propose to FIVB the following:

1. *Considering that the source causing AAF has been located, it was decided not to proceed with opening and analysis of B sample. And data package of A sample is not necessary anymore.*

[...]

3. *China Volleyball Association and the concerned Club has taken this case very seriously and also felt deeply sorry to what has happened. We send our sincere apology to FIVB and AVC. Now we have learnt the lessons, and are fully aware the lack of education on anti-doping for our players. Therefore, **strengthened measures have been carried out on anti-doping education to all our players and officials. Owing to the reason that the diet food, the source of AAF, was purchased by the player privately without the Club’s permission or knowledge, we hope FIVB would not impose sanction on the Club team but to the player according to FIVB Medical Regulations.***

4. The concerned player, being a player of volleyball for many years, purchased and took diet food which resulting in AAF. Ms. CHU not only failed to comply with our regulations on not allowing players to take unauthorized medicines and health products, but also did not full-filled the responsibilities of self-protection against prohibited substances.

5. The player, after many years' volleyball career, will receive sanction if FIVB decides so. Considering **this substance found is in no way to help enhance athletic performance**, we earnestly ask FIVB to consider this positive case is an individual behavior of the player. As Ms. CHU Jinling was only a player of substitution of the team and she already recognized her mistake and provided us all the remaining slimming products she has purchased online, we rely on FIVB investigation, analysis and judgment hoping to have a proper sanction decision to the player.”

(emphasis added by the Panel)

7. By letter of 28 June 2013 the FIVB informed the Athlete that she had the right to be heard before the FIVB Disciplinary Panel either by telephone conference or by a hearing in person.
8. By email of 1 July 2013 the Athlete opted to be heard via telephone conference. By the same email, the CVA provided FIVB also with
 - pictures of the labels of three supplements, namely two slimming products (one in green packaging and one in red packaging) by Yanhee Thailand and one Slimming Product by DHC Japan; and
 - test results produced by the Chinese laboratory mentioned above, showing that hydrochlorothiazide was found in the Yanhee product with the green packaging.
9. On 9 July 2013 the hearing via telephone conference was attended –aside from the FIVB Disciplinary Panel– by the representative of the Athlete Ms. QIU Aihua (by proxy signed by the Athlete), by Mr. LIU Wenbin, CVA Vice President and by Ms. SONG Yue, CVA Foreign Affairs Department. Also in attendance were the FIVB Medical and Anti-Doping Manager Mrs. Nadège Veintimilla, the FIVB legal advisor Mr. Andreas Zagklis and the FIVB legal affairs manager Mr. Mark Bovet.
10. The Athlete’s representative and the CVA representatives answered questions from the Panel and were given ample opportunity to explain their position and request a

reduced sanction. They confirmed the written statement of 24 June 2013 and additionally stated that

- the Athlete purchased and started using the supplements on 6 April 2013 and was completely unaware of the fact that the supplements contained a prohibited substance;
- the Athlete simply wanted to lose some weight and not to enhance her performance; the Athlete had received anti-doping education before the doping control but now the CVA will intensify its education programmes;
- the Club is travelling always with a team doctor;
- the Athlete declared on the doping control form the use of Huang Ti Tong, which is the Chinese name for the medication “progesterone”, since she has a medical condition;
- the Athlete does not speak Thai and could not read the label on the supplement;
- the Athlete is participating in volleyball competitions since she was 12 years old and has had no disciplinary record until today, at the age of 29;
- this was an individual case and the Athlete has regretted and apologized for her actions.

LEGAL CONSIDERATIONS

11. According to the WADA 2013 Prohibited List, the substance hydrochlorothiazide is included in the category S.5 (Diuretics and other Masking Agents) and is prohibited both in– and out-of-competition.
12. According to Article 2.1 of the FIVB Medical Regulations and of the World Anti-Doping Code, the presence of a prohibited substance in an athlete’s bodily specimen constitutes an anti-doping rule violation, sanctioned as per Article 10 of the FIVB Medical Regulations.
13. The above-mentioned sample (Nr. 2700361) belongs to the player Ms. Jingling Chu.
14. No Therapeutic Use Exception (T.U.E.) exists in this case, as per Article 4.4 of the FIVB Medical Regulations.

15. Therefore, being the presence of the prohibited substance in the Athlete's urine undisputed, the anti-doping rule violation is established.

16. The Panel emphasizes that, according to Article 2.1 of the FIVB Medical Regulations

"It is each Athlete's personal duty to ensure no Prohibited Substance enter 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 no necessary that intent, fault, negligence or knowing use, by the athlete's part, be demonstrated in order to establish an anti-doping violation under art. 2.1."

(emphasis added)

17. Given that hydrochlorothiazide is a specified substance, the Panel shall now review whether Article 10.4 of the FIVB Medical Regulations is applicable to this case and, if so, what the applicable sanction is.

18. The Panel notes that the Athlete, who is also a member of the Chinese Women's national team, surrendered to the CVA the packages of supplements that she was using and the CVA sent them for analysis to a WADA-accredited laboratory in China. The laboratory confirmed that one of the supplements, i.e. the supplement contained in the green-coloured package from the company Yanhee Thailand, contained hydrochlorothiazide. In view of this evidence, the Panel considers that the Athlete has proven how the substance entered her body.

19. Furthermore, the Panel finds that the Athlete successfully established that she did not use hydrochlorothiazide to mask another prohibited substance for the following reasons: Firstly, the Athlete does not understand Thai and even if hydrochlorothiazide was mentioned on the supplement's label, she could not have known (also due to the particular alphabet of such language) that this substance was contained in the supplement and therefore any intentional use of the substance is excluded. Secondly, and in any event, there is nothing in the analytical report to show that e.g. a steroid was found in low values, or anything in the Athlete's behaviour to suggest that hydrochlorothiazide was in her body as a result of a doping pattern.

20. The Panel therefore finds that Article 10.4 of the FIVB Medical Regulations applies to this case.

21. Turning now to the length of the sanction, the Panel notes that the Athlete's degree of fault is significant: although she is an experienced professional athlete, having participated for almost 10 years in FIVB competitions and most recently in the 2012 Olympic Games, she failed to exercise the caution required by the applicable rules. In particular, despite the fact that her team has a full time medical doctor and coaching staff, she decided to order online supplements from abroad (Thailand and Japan) in order to lose weight and then used them without consulting with her support personnel.
22. In addition, although the Panel did not receive specific evidence regarding the anti-doping education that she has received, it is common knowledge among athletes of such level that one may not blindly trust online supplement providers, in particular when he/she has no personal capability of checking the supplement's ingredients which are written in a foreign language. At this point, the Panel wishes to distinguish this case from the case of Ms Chernetska (FIVB case Nr. 2654034, decision of 4 November 2011), whose degree of fault was evidently higher since she visited a pharmacy, purchased and used a medicine which had a name (Furosemid-Darnitsa) actually identical with the name of the prohibited substance (furosemide).
23. In view of the above legal analysis and the evidence on file, considering also the principle of proportionality in calculating the sanction to be imposed and the fact that this is the athlete's first anti-doping violation and that she did not participate in any official competitions since 5 May 2013, last day of the Volleyball 2013 Asian Women's Club Championship.

Taking all the above into consideration

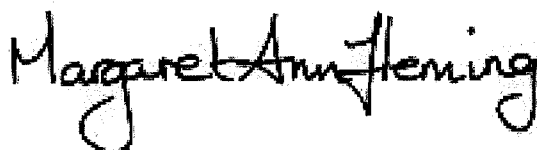
THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. The athlete Ms CHU JINLING (China) has committed an anti-doping rule violation (presence of the prohibited substance Hydrochlorothiazide in her bodily specimen) according to Article 2.1 of the FIVB Medical Regulations.
2. A sanction of fourteen (14) months of ineligibility shall be imposed on the player Ms CHU JINLING, according to Article 10.4 of the FIVB Medical Regulations.
3. The period of ineligibility shall start on 6 May 2013 and end on 5 July 2014, as per Article 10.9 of the FIVB Medical Regulations.
4. This decision may be appealed in accordance with the attached Notice of Appeals.

Decided in Lausanne, on 10 July 2013

For the FIVB DISCIPLINARY PANEL

A handwritten signature in black ink that reads "Margaret Ann Fleming". The signature is written in a cursive, flowing style.

Ms. Margaret Ann Fleming

Chairwoman

NOTICE OF APPEALS
(doping cases)

An appeal may be filed against this decision exclusively before the Court of Arbitration for Sport (CAS), in accordance with Article 13 of the FIVB Medical Regulations and with the provisions of the Code of Sports-Related Arbitration (see www.tas-cas.org).

The time-limit to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of this decision by the appealing party.

In accordance with Article 18.6 of the FIVB Medical Regulations: "Notice to an Athlete or other Person who is a member of a National Federation may be accomplished by delivery of the notice to the National Federation."

In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.

The address and contact details of the CAS are the following:

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne, Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org