

## **WORLD RUGBY**

IN THE MATTER OF THE REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF ALLEGED DOPING OFFENCES BY **NUWAN HETTIARACHCHI** (SRI LANKA) CONTRARY TO REGULATION 21

BEFORE A JUDICIAL COMMITTEE APPOINTED PURSUANT TO REGULATION 21.20 and 21.21 CONSISTING OF:

### Judicial Committee:

**Joseph de Pencier** (Canada)  
**Dr George Ruijsch van Dugteren** (South Africa)  
**Graeme Mew** (Canada – Chair)

### Appearances

*Ben Rutherford*, Counsel for World Rugby  
*Ravindu Peiris*, Counsel for the Player

### Attendances

Nuwan Hettiarachchi (the Player)  
David Ho (Anti-Doping Manager – Compliance and Results, World Rugby)  
Lasitha Gunarathne (Vice-President, Sri Lanka Rugby Football Union)

Hearing: 4 November 2014 by telephone conference; additional written submissions made on 28 November 2014

## **REASONS FOR DECISION**

1. The Ayurveda system of medicine is the descendant of indigenous Sri Lankan medicine, which was based entirely on herbal and organic compounds. Modern Ayurvedic medicine is recognised in Sri Lanka through the *Ayurveda Act* No. 31 of 1961. Ayurvedic treatments are based mostly on herbal remedies and medicine derived from natural substances.
2. This matter involves an alleged anti-doping rule violation which is said to have arisen as a result of a player's use of an ayurvedic remedy.
3. World Rugby, which at the time of the hearing in this matter was known as the International Rugby Board alleges that Nuwan Hettiarachchi (the "Player") committed an anti-doping rule violation contrary to Regulation 21.2.1 of the *Regulations Relating to the Game* as a result of an adverse analytical finding for the Presence of a Prohibited Substance, namely prednisolone, in a urine sample provided on 17 May 2014.

4. This allegation arises from an in-competition doping control procedure undertaken at the 2014 Asian 5 Nations match between Sri Lanka and Philippines in Colombo, Sri Lanka.
5. Prednisolone is classified under S9.Glucocorticosteroids on the World Anti-Doping Agency's 2014 List of Prohibited Substances (which appears at Schedule 2 of Regulation 21).
6. Following a preliminary review of the case undertaken in accordance with Regulation 21.20.1, the Player was notified, via the Sri Lanka Rugby Football Union (the "Union"), that it was alleged that he had committed an anti-doping rule violation. The Player was provisionally suspended, pending the outcome of his case, with effect from 7 July 2014 (the date on which notification letter was received by the Player).
7. The Player wrote to the Union on 15 July 2014 denying the anti-doping rule violation and requesting an expedited hearing before a Judicial Committee. The Player has not requested testing of the B Sample which was provided by him during the sample collection process.
8. The independent members of this Judicial Committee ("JC") were then appointed by the Chairman of the Judicial Panel of World Rugby to consider the Player's case.
9. A hearing date was initially set for 2 September 2014. The JC gave directions to the parties which required, inter alia, that each party disclosed particulars of the evidence, including documents and witness statements, upon which it/he relied, by 15 August 2014.
10. The player asked for, and received, an extension of that deadline and then failed to meet the extended deadline. The hearing was moved back to 17 September. The Player then requested an adjournment from that date, to accommodate his legal representative. A new hearing date of 4 November was set with the agreement of all parties.

#### Anti-Doping Rule Violation Established

11. The Player, as noted, initially denied the anti-doping rule violation on the basis that he had no knowledge, or any reason to believe or suspect, that there would be any banned substance in his urine.
12. At the commencement of the hearing, however, the Player acknowledged that an anti-doping rule violation on his part had occurred, contrary to Regulation 21.1.1,<sup>1</sup> but maintained that there was no intention to enhance sport performance and no fault on his part.

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<sup>1</sup> The presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample.

## Hearing Record

13. The JC had before it a record which included the Doping Control Form, a Team Member Consent Form for the 2011 Asian Five Nations tournament which had been signed by the Player, an Analysis Result Record from the Romanian Doping Control Laboratory, the Preliminary Review Report by Prof David Gerard, a copy of the IRB Anti-Doping Handbook 2014, distributed to the Union for use by the Player and other members of his team and the Tournament Manual issued by the Asian Rugby Football Union for the 2014 tournament. The Player filed a copy of a prescription dated 23 April 2014 from the New Lanka Ayurvedic Centre for a medication called “Draksharishtaya”, and provided written submissions, the evidentiary components of which were supplemented by the Player’s oral testimony at the hearing.

14. Written submissions were, in addition, received from the Board before the hearing. Following the hearing, the JC asked the parties to make further submissions in regard to a number of articles and abstracts of articles addressing the issue of adulteration or contamination of ayurvedic medicines. These submissions were received on 28 November 2014.

## Facts

15. The Player has been playing rugby for seven years, the last five years as a member of his national team. He depends on rugby for his income. He is married and supports a family. In the last season that he played, he made around \$20,000 playing for a local franchise.

16. The Player acknowledged a general awareness of anti-doping regulations at the time he was tested (needless to say, he is far more familiar with them now). He understood that he was responsible for checking what entered his system. He knew about recent doping cases involving other Sri Lanka players.<sup>2</sup> He claimed, however, to have been unaware that those cases arose from players using a seemingly legal supplement.

17. The Player also acknowledged that he had signed a participation agreement in 2011 but said he had not read it. He was in possession of some anti-doping educational materials but did not understand the information because of his limited English. He has visited the World Rugby website and can read the names of tournaments and teams, but does not have enough English to understand more substantive content.

18. The Player had previously undergone doping control procedures on one occasion in 2012.

19. Until he found out about his positive test, the Player says that he was unaware that herbal remedies he was using might be contaminated with prohibited substances.

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<sup>2</sup> [IRB v Keith Gurusinghe, Saliya Kumara and Eranga Swarnithilake](http://keeprugbyclean.worldrugby.org/downloads/cases/53/J-110916-GM-Sri%20Lanka%20Players%20Decision.pdf) IRB Judicial Committee, 16 September 2011. <http://keeprugbyclean.worldrugby.org/downloads/cases/53/J-110916-GM-Sri%20Lanka%20Players%20Decision.pdf> (online)

20. The Player has experienced asthmatic and respiratory conditions as a result of allergies. For some time, he relied on what he describes as “western medical treatments” for these conditions, to no avail. He then turned to Ayurveda, a system of traditional indigenous medicine in Sri Lanka. His condition improved. When he developed a cough and cold, he obtained some ayurvedic medicine from a practitioner in his home town, Kandy. Although the Player says that he told the ayurvedic doctor that he was an athlete, he did not show the doctor a copy of the Prohibited List. He did not consult with a qualified medical doctor or sports doctor before using it. He did not check with his Union either. It did not occur to him that there would be any doping related concerns because ayurvedic medicines were based on herbal remedies using natural products.

21. A copy of the prescription for the medicine which the Player was taking at the time he was tested was produced. The medicine was in a 500-600 mL container. The Player believes that the bottle was not properly sealed. This first bottle of medicine the player used lasted for about one month. He took two teaspoons of the medicine in the morning, and two in the afternoon. If coughing persisted he was told that he should also take a dose at noon. He recalls taking a dose of the medicine at 10 AM on the day that he was tested. He felt better when he took the medicine. He did not experience any adverse reaction, such as nosebleeds or shaking.

22. After he was tested, but before he was informed of the positive test result, the plaintiff obtained a second bottle of the same medicine. On this occasion he bought the medicine in Colombo. He remembers that it was properly sealed.

23. Prior to providing the sample which gave rise to his adverse analytical finding, the player declared “herbal medication for cough and allergy” on his doping control form.

24. It came as a complete surprise to the Player when he received notification that his urine sample had produced an adverse analytical finding. He no longer had the first bottle of medicine, but gave up the second bottle for testing. No prednisolone was found in the contents of that bottle.

25. The Player made other enquiries. He checked with another ayurvedic doctor who told him that these traditional remedies were sometimes mixed with western drugs. The player went to the medical centre in Kandy that he had obtained the first bottle of medicine from. They denied that they had mixed western products with traditional medicines.

26. His inquiries continued. Although there were traditional ayurvedic doctors who told the Player and his lawyer that prednisolone had been used to enhance traditional medicines, none of these individuals were willing to come forward and testify at the hearing out of fear for their jobs.

27. The Player states that he took this remedy solely for the purposes of treating his medical condition. He had no thoughts of enhancing sport performance.

28. Following the oral hearing and initial deliberations by the JC, the JC brought to the attention of the parties certain information available either publicly or on

databases used by medical professionals which addressed the issue of adulteration or contamination of ayurvedic medicines.

29. It is clear from the articles reviewed that in India there is a history of ayurvedic practitioners and clinics engaging in the adulteration and contamination of ayurvedic medicines with western medicines, particularly corticosteroids.

30. Although there is no comparable academic or investigative literature in Sri Lanka, similar practices have previously received public attention. A 2011 comment posted on lankaweb.com entitled “Prednisone Abuse by Ayurvedic Quacks in Sri Lanka” referred to a recent media report that a Sri Lanka cricketer, Upul Tharanga, had tested positive for Prednisolone, which had been prescribed to him by an alternate medical practitioner. The comment continued:

Unfortunately some unscrupulous quacks who call themselves Ayurvedic doctors abuse Prednisone and include it in very high doses in their arishta’s [sic] etc. I have heard about even some well known Ayurvedic practitioners resorting to this despicable practice. They claim to cure asthma and other respiratory illnesses and the unsuspecting patients are given high doses of Prednisone.

31. On behalf of the Player it was said that although general awareness of the adulteration or contamination of ayurvedic medicines has increased in India, the same cannot be said in Sri Lanka and that, the comment posted on lankaweb.com notwithstanding, the case of Upul Tharanga was not a well-known fact. Furthermore, non-English speakers such as the Player had limited access to this sort of information, almost all of which is reported in English language media.

### The Regulations

32. Under Regulation 21.2.1, the “presence of a Prohibited Substance or its Metabolites or Markers in a Player’s bodily Sample” constitutes an anti-doping rule violation. The violation occurs whether or not the Player intentionally used the Prohibited Substance or was negligent or otherwise at fault.

33. Regulation 21.6 addresses the principle of personal responsibility and provides:

#### **21.6 Roles and Personal Responsibility**

21.6.1 It is each Player’s responsibility to ensure that:

- (a) No Prohibited Substance is found to be present in his body and that Prohibited Methods are not used;
- (b) He does not commit any other anti-doping rule violation;
- (c) He is available for Sample collection; and
- (d) He informs Player Support Personnel, including, but not limited to, his doctors of his obligation not to use Prohibited Substances and Prohibited Methods and to take responsibility to ensure that any medical treatment received by him does not violate any of the provisions of these Regulations.

34. Furthermore, Regulation 21.6.3 confirms that:

It is the sole responsibility of each Player, Player Support Personnel and Person to acquaint themselves and comply with all of the provisions of these Anti-Doping Regulations including the Guidelines.

35. Prednisolone is in the category of Prohibited Substances which the Regulations and the *World Anti-Doping Code* recognise as “Specified Substances”.<sup>3</sup>

36. While the presumptive sanction for an adverse analytical finding based on the presence of prednisolone is a period of Ineligibility of two years<sup>4</sup>, this is subject to conditions for the eliminating or reducing the period of Ineligibility (Regulation 21.22.3 and 21.22.4) or conditions for increasing the period of Ineligibility (Regulation 21.22.9).

37. Regulation 21.22.3 addresses the elimination or reduction of the period of Ineligibility for Specified Substances (including prednisolone) under specific circumstances in the following terms:

Where a Player or other Person can establish how a Specified Substance entered his body or came into his Possession and that such Specified Substance was not intended to enhance the Player’s sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in Regulation 21.22.1 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from the Game, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the Player or other Person must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the hearing panel the absence of intent to enhance sport performance or mask the Use of a performance enhancing substance. The Player’s or other Person’s degree of fault shall be the criterion.

38. If the Player cannot take the benefit of Regulation 21.22.3, it is still open to him to obtain a reduced sanction if he can establish no fault or negligence, or no

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<sup>3</sup> Regulation 21.4.5 provides:

For purposes of the application of Regulation 21.22 (Sanctions on Individuals), all Prohibited Substances shall be “Specified Substances” except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances.

<sup>4</sup> Regulation 21.22.1 provides:

The period of Ineligibility imposed for a violation of Regulation 21.2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Regulation 21.2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) and Regulation 21.2.6 (Possession of Prohibited Substances and Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Regulation 21.22.3 and 21.22.4, or the conditions for increasing the period of Ineligibility, as provided in Regulation 21.22.9, are met:

First violation: Two (2) years' Ineligibility

significant fault or negligence on his part (as provided for by Regulations 21.22.4<sup>5</sup> and 21.22.5<sup>6</sup> respectively).

### Discussion and Analysis

39. In order to take the benefit of Regulation 21.22.3, the Player must (a) establish to the satisfaction of the JC on the balance of probabilities how the prednisolone entered his body; and (b) establish to the comfortable satisfaction of the JC that his individual Use of prednisolone was not intended to enhance his sport performance or mask the Use of a performance-enhancing substance.<sup>7</sup> Furthermore, in order to justify any reduction or elimination of the period of Ineligibility, the Player, as a mandatory condition, must also produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the JC the absence of intent to enhance sports performance or mask the Use of a performance enhancing substance.

40. The purpose of Regulation 21.22.3 and the equivalent articles of the *World Anti-Doping Code* is to confine the circumstances in which the presumptive minimum mandatory sanctions may be reduced to instances in which the Player can show (the burden of proof being upon him or her) the specific circumstances of how the Prohibited Substance did in fact enter his or her body. This threshold requirement of establishing the route of, and factual circumstances surrounding the ingestion of, the Prohibited Substance ensures that declarations of innocence on the part of the Player or the raising of various hypotheses will not be sufficient. As the International Tennis Federation Anti-Doping Tribunal reasoned in the case

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<sup>5</sup> 21.22.4 No Fault or Negligence:

If a Player establishes in an individual case that he bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in a Player's Sample in violation of Regulation 21.2.1 (presence of Prohibited Substance), the Player must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated. In the event this Regulation is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Regulation 21.22.10.

<sup>6</sup> 21.22.5 No Significant Fault or Negligence:

If a Player or other Person establishes in an individual case that he bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than 8 years. When a Prohibited Substance or its Markers or Metabolites is detected in a Player's Sample in violation of Regulation 21.2.1 (presence of Prohibited Substance), the Player must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.

<sup>7</sup> The nature of the burdens the Player must satisfy are set out in the Comments to Article 10.4 of the 2009 version of the *World Anti-Doping Code* which is available at [www.wada-ama.org](http://www.wada-ama.org). The Comment also elaborates in relation to the type of circumstances which in combination might lead a hearing panel to be comfortably satisfied of no-performance-enhancing intent, for example "the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete's open Use or disclosure of his or her Use of the Specified Substance; and a contemporaneous medical records file substantiating the non sport- related prescription for the Specified Substance..."

of *ITF v Hood* (delivered 8 February 2006) at para. 14, the requirement of the player under the equivalent tennis regulations to show the route of ingestion:

...is necessary to ensure that the fundamental principle that the player is personally responsible for ensuring that no prohibited substance enters his body is not undermined by an application of the mitigation provisions in the normal run of cases.

The rationale for the requirement, in the Regulation 21 and the *World Anti-Doping Code*, that the route, timing and circumstances of ingestion of the Prohibited Substance be demonstrated by a player, is that otherwise it would not be possible to evaluate the degree of caution exercised by the player in the absence of a specific explanation and supporting evidence. As the panel in *Hood* identified, and as approved in *IRB v Vikilani* (16 January 2013)<sup>8</sup> at paragraph 47, the Regulation operates to prevent unsubstantiated tales of apparently inadvertent consumption from potentially triggering reductions.

41. That having been said, it should be noted that prednisolone is a Prohibited Substance which, according to Professor Gerrard, who conducted the preliminary review, is “clinically appropriate” to “manage an allergic condition” and could have been the subject of an application for a Therapeutic Use Exemption.

42. Prednisolone is not, however, an accepted feature of complimentary, alternative, or “herbal” medicines.

#### *Cause of Anti-Doping Rule Violation*

43. While the evidence of the Player of alone left us concerned that the Player could not meet his burden of demonstrating how the prednisolone had entered his system, the production of literature relating to other occurrences of the contamination or adulteration of ayurvedic and other traditional medicines lends credence to, and as discussed below, corroborates, the Player’s account to a sufficient degree that his burden has been discharged.

44. In particular, we accept that the Player was prescribed Draksharishtaya, an ayurvedic medication used to treat asthmatic and chronic respiratory conditions as a result of a having persistent cough and other asthmatic symptoms. We accept that he took that medication on a regular basis for at least a month prior to the day that he was tested and, indeed, that he consumed the medicine on the day of testing.

45. We are therefore satisfied that, on a balance of probabilities, the Players’ anti-doping rule violation occurred as a result of his use of the ayurvedic medicine, prescribed by a traditional medicine doctor, which contained prednisolone.

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<sup>8</sup> <http://keeprugbyclean.worldrugby.org/downloads/cases/67/130116%20IRB%20v%20Vikilani%20-%20BJC%20Decision.pdf> (online)



### *Lack of Intent to Enhance Sport Performance*

46. There is no reason to disbelieve the Player's evidence that he took the medicine which, unknown to him, contained prednisolone, to treat his cough and his allergies, and not to enhance his sport performance.

### *Corroboration*

47. As noted above, the Player attempted to secure the cooperation of one or more ayurvedic practitioners to provide evidence to the JC on the practice of adding western drugs to ayurvedic medicines. He did not succeed in doing so. The reasons for that, while regrettable, are understandable.

48. In [\*IRB v Chvihivivadze\*](#),<sup>9</sup> a judicial committee observed (at para 31) that:

... each case will turn on its own facts and whether or not evidence should be considered as corroborative will be determined on a case by case basis having regard to all of the circumstances and the application of common sense.

49. Although it would have been preferable to have had evidence on this issue in the form of testimony of a knowledgeable practitioner, which was subject to cross-examination, the articles and abstracts which were subsequently produced provide some, and, in our view (which was, in particular, informed by the knowledge and experience of the medical member of the JC), sufficient corroboration for the Player's account.

### *Degree of Fault*

50. The Player argues that this is one of the extremely rare circumstances in which there should be no finding a fault on his part or, if it is found that there is any fault, it should be regarded as minimal and subject to a penalty of no more than a warning and reprimand.

51. We do not agree with that submission. Although the Player openly disclosed his use of ayurvedic treatment on his doping control form and felt that he had no reason to be concerned about the use of traditional remedies, which are ubiquitous in Sri Lanka, this did not absolve him of the basic responsibilities which he and every other player of the Game undertake as a condition of participation.

52. Even with his limited knowledge of anti-doping regulations, the Player knew that he was responsible for what he consumed, yet he made no effort to determine exactly what was in the medicine that he used.

53. Telling a traditional medicine practitioner that he was an athlete, without further reference to his specific responsibilities under the anti-doping regulations, was insufficient to discharge the Player's responsibilities under regulation 21.6.1(d).

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<sup>9</sup> [http://keeprugbyclean.worldrugby.org/downloads/cases/31/j-09602-gm-chvihivivadze\\_8981.pdf](http://keeprugbyclean.worldrugby.org/downloads/cases/31/j-09602-gm-chvihivivadze_8981.pdf) (online)

54. The Player acknowledges that he could have, but failed to, consult with the Union prior to using the medicine.

55. The Player's geographic location, his limited general education, his limited ability to read and understand English and the strong cultural acceptance of ayurvedic medicine in his country (as reflected in the legislation which regulates it) are all mitigating factors. But they do not absolve the Player of his basic responsibilities and, hence, do not entirely negate his fault for the adverse analytical finding that occurred.

56. That said, we are of the view that the Player qualifies for consideration of a reduced sanction pursuant to Regulation 21.2 2.3 and that a period of Ineligibility of less than the presumptive sanction of two years is appropriate.

### *Sanction*

57. Because we are of the view that the Player is entitled to the benefit of a reduced sanction due to his use of a Specified Substance, and because we have found there was some fault Player's part, it is not necessary for us to consider the application of Regulation 21.22.4 (No Fault or Negligence) or Regulation 21.22.5 (No Significant Fault or Negligence).

58. Counsel for World Rugby advises that this is the first case involving a glucocorticosteroid to come before a judicial committee. That said, there are a number of other doping cases, both in rugby and other sports, involving a Specified Substance allegedly taken for medical reasons without a Therapeutic Use Exemption. These include [Rugby World Cup Ltd v Paterson](#) (BJC, 20 January 2012 - oxycodone, four months' Ineligibility);<sup>10</sup> [IRB v Pronenko](#) (BJC, 14 November 2011 – furosemide, six months' Ineligibility);<sup>11</sup> [The Football Association v Touré](#) (FA Regulatory Commission, 28 May 2011 – bendroflumethiazide, six months' Ineligibility);<sup>12</sup> [World Anti-Doping Agency v Fédération Internationale de Gymnastique and Melnychenko](#) (CAS 2011/A/2403 25 August 2011 – furosemide, four months' Ineligibility);<sup>13</sup> [Drug Free Sport New Zealand v Chalmers](#) (Sports Tribunal of New Zealand, 11 March 2010 – furosemide, five months' Ineligibility);<sup>14</sup> [Fédération Internationale de Gymnastique v Dos Santos](#) (FIG Presidential Commission, 27 January 2010 – furosemide, five months' Ineligibility);<sup>15</sup> and [K. v Fédération Internationale de Ski](#) (CAS 2005/A/918 – dexamethasone, 10½ months' Ineligibility).<sup>16</sup>

59. The *Paterson*, *Pronenko*, *Melnychenko*, *Chalmers*, *Dos Santos* and *K. v FIS* cases each involved athletes who had ingested Prohibited Substances through legitimate medical treatment, such as being provided by a team doctor or

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<sup>10</sup> <http://keeprugbyclean.worldrugby.org/downloads/cases/57/IRB%20v%20Paterson%20Decision.pdf> (online)

<sup>11</sup> <http://keeprugbyclean.worldrugby.org/downloads/cases/56/Y14123659-Pronenko.pdf> (online)

<sup>12</sup> <http://sportslawnews.files.wordpress.com/2011/06/kolo-toure-decision-for-distribution.pdf> (online)

<sup>13</sup> <https://wada-main-prod.s3.amazonaws.com/resources/files/cas-2011-a-2403-melnychenko.pdf> (online)

<sup>14</sup> [http://www.sporttribunal.org.nz/Documents/Decisions/2010/Chalmers\\_Decision.pdf](http://www.sporttribunal.org.nz/Documents/Decisions/2010/Chalmers_Decision.pdf) (online)

<sup>15</sup> <http://www.sportcentric.com/vsite/vfile/page/fileurl/0,,5187-1-1-160876-0-file.00.pdf> (online)

<sup>16</sup> <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/918.pdf> (online)

specialist sports doctor or in emergency circumstances. In *Paterson* that treatment was carried out at Rugby World Cup 2011 by an experienced Team doctor the player considered to be familiar with all aspects of the Prohibited List (which unfortunately he was not). In *Pronenko* the player was located in an isolated part of Russia away from the Union and suffering from a medical emergency for which he had to obtain treatment. *Melnychenko* was a unique and extreme case involving a potentially fatal illness to a 15 year old which required emergency treatment during which she was administered furosemide. In *Chalmers* the athlete consulted an “experienced sports medical practitioner” and was prescribed the diuretic furosemide (on the erroneous basis that it was only prohibited In Competition) for a medical condition involving swelling and pain associated with menstruation, that is, not related to her sporting performance. In the case of *Dos Santos*, that athlete was undergoing rehabilitation from three knee surgeries when prescribed furosemide by a non-sports doctor to assist her recovery, had not competed for over a year and considered herself effectively retired at the time of the test and thus may not have had ready access to team physicians. In *K v FIS* the Court of Arbitration for Sport held, at paragraph 28, that the athlete's failure was "in her lack of knowledge and application of the proper TUE procedures for the Specified Substance in question."

60. Counsel for World Rugby notes that a common feature of those cases which did not involve the administration of Specified Substances by team doctors or specialist sports physicians was the failure of the athletes to advise their medical practitioners that they were subject to doping control, to check the substances that they were prescribed or to follow the correct procedures for obtaining a Therapeutic Use Exemption. It was further argued that in a case involving the consumption of “herbal” remedies, the sanction should be of a greater magnitude than the cases referred to in the preceding paragraphs.

61. Counsel for the Player refers to previous decisions of judicial committees in [IRB v. Shortly](#) (2008),<sup>17</sup> [IRB v Slimani](#) (2008)<sup>18</sup> and [IRB v Sorokin](#) (2009)<sup>19</sup> as supporting a conclusion that there should be no fault ascribed to the player and, therefore, no sanction. This is not a wholly accurate representation of those cases since, in each instance, the athlete was found to be at fault. In *Shortly*, the player tested positive for finasteride, which he had been prescribed to treat hair loss and had been using for several years. Soon after he was tested, finasteride was removed from the Prohibited List. He was given a warning and a reprimand. In *Slimani*, the player was given a nasal spray which contained tuaminoheptane by a team doctor to treat congestion. He, too, received a warning and a reprimand. In *Sorokin*, the player was prescribed medication to treat a serious heart condition which contained indapamide. He had been using similar medication for many years without any anti-doping implications. His medication had been changed shortly before he was tested, and unknown to him or his

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<sup>17</sup> [http://keeprugbyclean.worldrugby.org/downloads/cases/27/bjcdecisionshortly-canada\\_6352.pdf](http://keeprugbyclean.worldrugby.org/downloads/cases/27/bjcdecisionshortly-canada_6352.pdf) (online)

<sup>18</sup> [http://keeprugbyclean.worldrugby.org/downloads/cases/25/bjcdecision-slimanifrance\\_6351.pdf](http://keeprugbyclean.worldrugby.org/downloads/cases/25/bjcdecision-slimanifrance_6351.pdf) (online)

<sup>19</sup> [http://keeprugbyclean.worldrugby.org/downloads/cases/25/bjcdecision-slimanifrance\\_6351.pdf](http://keeprugbyclean.worldrugby.org/downloads/cases/25/bjcdecision-slimanifrance_6351.pdf) (online)

medical advisers, it contained different ingredients which resulted in the positive test. He received a warning a reprimand.

62. In each of these cases referred to by the Player, the circumstances were both unique and extreme. They are therefore of limited assistance in determining the appropriate sanction in this matter.

63. As we have already said, the Player could and should have done more to ensure that the ayurvedic medication he was taking did not contain any prohibited substances. But in the overall context in which the anti-doping rule violation occurred, there are mitigating circumstances which would lead us to conclude that a sanction in the mid-range of the cases cited by World Rugby is appropriate.

64. Having had regard to all of the circumstances, and having carefully considered the arguments of counsel and the authorities placed before us, the appropriate sanction would, in our view, be a period of Ineligibility of six months.

#### Decision

65. The Player has committed an anti-doping rule violation contrary to Regulation 21.2.1 as a result of an adverse analytical finding for the Presence of a Prohibited Substance, namely prednisolone.

66. Because of the provisional suspension already served by the Player, he is free to play and otherwise participate in the Game with immediate effect.

#### Costs

67. If the Board wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.10, written submissions should be provided to the BJC via Mr. Ho by 17:00 Dublin time on 16 January 2015 with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 23 January 2015.

#### Review

68. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.25) or an appeal, where the circumstances permit, to the Court of Arbitration for Sport (Regulation 21.27). In this regard, attention is also directed to Regulation 21.24.2, which sets out the process for referral to a Post-Hearing Review Body, including the time within which the process must be initiated.

7 January 2015

A handwritten signature in black ink, appearing to read 'Graeme Mew', with a horizontal line underneath the name.

Graeme Mew, Chairman