

**IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL**

**IN THE MATTER OF THE  
ATHLETICS ASSOCIATION OF IRELAND  
AND**

**the Athlete IS-4003**

**DECISION**

**A. INTRODUCTION**

1. This is the written decision of the Irish Sport Anti-Doping Disciplinary Panel (the "Panel") in proceedings brought by the Athletics Association of Ireland (also known as Athletics Ireland) (the "Athletics Association") under the Irish Anti-Doping Rules (2009 Version) (the "Rules") against IS-4003, a masters athlete engaged in the sport of athletics. The Panel heard the case on 18 May 2010 and gave its decision immediately following the hearing. The decision is recorded in the transcript of the hearing which is attached at Appendix A to this Decision.
2. It was alleged by the Athletics Association that Ms. IS-4003 committed one of the anti-doping rule violations set out in Article 2.1 of the Rules by virtue of the presence of a Prohibited Substance or one of its Metabolites or

Markers in a sample provided by her during In-Competition testing on [...] 2010.<sup>1</sup> The violation is alleged to have occurred when Ms. IS-4003 competed in the [...] race [...] at the [...] Championships [...], Canada. The Prohibited Substance in question was ephedrine. Ephedrine is a Prohibited Substance and also a Specified Substance under the World Anti-Doping Code 2010 Prohibited List (International Standard). ephedrine is prohibited under that list when its concentration in urine is greater than 10 micrograms per millilitre. The analytical results in respect of the sample of urine (the A Sample) taken from Ms. IS-4003 immediately following the [...] race on [...] 2010 disclosed the presence of ephedrine with the concentration of 11.4 micrograms per millilitre of urine (with a tolerance of 0.9 micrograms per millilitre). This was, therefore, slightly above the permitted threshold. Having been informed of the results of the test in a letter from the Irish Sports Council dated 27 April 2010, Ms. IS-4003, through her solicitors, admitted the violation and sought a hearing before the Panel on the issue of appropriate consequences or sanctions which might be imposed in respect of the violation. Ms. IS-4003 waived her entitlement to have her "B" Sample tested.

3. The Panel was in a position to facilitate an early hearing of the matter. The hearing took place on 18 May 2010. Having heard evidence and submissions during the course of the hearing, the Panel was in a position to give its oral decision that night. The Panel was satisfied that Ms IS-4003 had demonstrated to its satisfaction on the balance of probabilities how the Specified Substance had entered her body in the form of two ephedrine tablets taken by her very early in the morning of [...] 2010 and after breakfast that day and through ephedrine nasal drops taken by her the previous evening. Ms IS-4003 gave evidence (which the Panel accepted) that she had purchased the ephedrine tablets at a health food store in [...]. The ephedrine nasal drops had been purchased by her in a chemist in Ireland. The Panel was also satisfied to its comfortable satisfaction that Ms IS-4003 had provided corroborating evidence in

---

<sup>1</sup> The terms "*Prohibited Substance*", "*Metabolites*", "*Markers*", "*Specimen*" and "*In-Competition*" are all defined in the Rules.

addition to her word which established the absence of an intent on her part to enhance her sport performance or to mask the use of a performance enhancing substance. The Panel was, however, satisfied and so found that Ms IS-4003 did bear some fault or responsibility in respect of the violation.

4. In those circumstances of the range of possible sanctions open to it the Panel felt that the appropriate sanction was a reprimand and a period of ineligibility of eight weeks which period should run from 27 April 2010 being the date on which the Irish Sports Council first wrote to Ms IS-4003 with the results of her test. In addition, as indicated in its oral decision on 18 May 2010, the Panel noted that in light of the violation the results obtained by Ms IS-4003 in the [...] race on [...] 2010 were automatically disqualified under Article 9.1 of the Rules with the consequent forfeiture of [...], [...] associated with her win in that race. Furthermore, the Panel decided that the results of the race in which Ms IS-4003 competed on [...] 2010 at which Ms IS-4003 obtained [...] place [...] should also be disqualified with the consequent forfeiture of her [...] attributable to her placing in that race under Article 9.3 in circumstances where no case had been made (nor indeed could it have been made) that fairness required otherwise. The Panel, however, did not feel it appropriate to give any direction or issue any communication to the organisers of the [...] for the purpose of disqualifying the results obtained by Ms IS-4003 in any competition in which she competed at the Games prior to [...] 2010.
5. In this written Decision we outline the evidence provided during the course of the hearing and set out the reasons for the Panel's decision. Before doing so, however, we set out the relevant factual background.

#### **B. RELEVANT BACKGROUND**

6. Ms. IS-4003 was competing as a masters athlete at the [...] Indoor Championships [...], Canada during the week commencing [...] 2010 when she was selected for In-Competition

testing on [...] 2010 having just won the women's [...] race. She completed a Doping Control Form (to which reference will be made later) on which she disclosed the fact that she had used certain prescribed and non prescribed medications within the previous 10 days. Ms. IS-4003 A Sample of urine was tested by a laboratory at Laval, Quebec, Canada. The results of the testing of Ms. IS-4003 sample indicated as follows "*Low levels of endogenous steroids; dilute (1.008). ephedrine measured at  $11.4 \pm 0.9 \mu\text{g/mL}$  ( $k=2$ ), threshold  $10 \mu\text{g/mL}$* ". An adverse analytical finding was, therefore, reported in respect of the sample showing the presence of ephedrine. As indicated above ephedrine is a Prohibited Substance on the 2010 Prohibited List of the World Anti-Doping Code. It is also a Specified Substance under the Code. ephedrine is prohibited when its concentration in urine is greater than 10 micrograms per millilitre. Ms. IS-4003 sample showed a concentration of ephedrine in urine of slightly greater than the permitted level.

7. The Athletics Association received correspondence from the IAAF Anti-Doping Administrator notifying it of the alleged anti-doping rule violation and stating that as Ms. IS-4003 was not an international – level athlete within the meaning of that term in the IAAF Anti-Doping Rules, the matter fell to be dealt with by the Athletics Association as Ms. IS-4003 relevant national federation. As Ms. IS-4003 is a registered member of [...] which is affiliated to the Athletics Association, she is subject to the Rules having regard to the provisions of Article 1.2.1.1 of the Rules. In the circumstances, the results management process fell to be conducted by the Irish Sports Council. The Irish Sports Council was duly authorised to carry out the results management process under the Rules on behalf of the Athletics Association. The Athletics Association delegated results management responsibility to the Irish Sports Council. No issue was raised in relation to this delegation or to the respective roles of the Irish Sports Council and the Athletics Association in this regard.
8. By letter dated 27 April 2010, the Irish Sports Council notified Ms. IS-4003 that she was alleged to have committed an anti-doping rule violation by virtue of the presence of the Prohibited Substance in her sample. The Irish Sports Council's letter was extremely detailed and informed Ms. IS-4003 of

her various rights including her right to a hearing before the Panel and her right to have her B sample tested, if she wished.

9. By another letter of the same date, the Irish Sports Council notified the violation to the Panel and referred the matter to the Panel for adjudication pursuant to Article 7.3.2 and Article 8.3.1 of the Rules respectively. The Panel was thereby required pursuant to Article 8 of the Rules to adjudicate as to whether Ms. IS-4003 had committed the alleged violation of the Rules and, if so, what consequences or sanctions should be imposed in respect of such violation.
10. Ms Menton, the Secretary of the Panel wrote to Ms. IS-4003 by letter dated 10 May 2010 informing her of the fact that the matter had been notified and referred to it and providing her with information in relation to the role of the Panel. That letter apparently crossed with a letter from [...], Solicitors of [...] Ireland, who had been instructed on behalf of Ms. IS-4003 and who acted for her in the proceedings before the Panel. In their letter which was dated 7 May 2010, [the Solicitors] confirmed that Ms. IS-4003 admitted the anti-doping rule violation and sought the opportunity to attend before the Panel to provide evidence in relation to the violation. In their letter, [the Solicitors] stated that their client would be:

*"producing evidence establishing how the substance entered her body and further that it was not intended to enhance her sporting performance or intended to mask the use of any performance enhancing substance ... [and that their client would] ... be calling witnesses in support of her position and will be submitting medical evidence."*

11. [the Solicitors] continued in that letter:

*"[Their] client's evidence that will be corroborated [will be] that the adverse finding arose from her use of a nasal spray purchased whilst she attended the Championship and used by her the night before and the day of the [...] race."*

12. [the Solicitors] further advanced a submission as to why no provisional suspension should be imposed upon Ms. IS-4003 pending a full hearing of the matter by the Panel.
13. The Secretary of the Panel replied to that letter by letter dated 11 May 2010. It was pointed out in that letter that the imposition of any provisional suspension was a matter for the Athletics Association and not for the Panel. The letter further pointed out that the Panel would be open to an expedited hearing of the entire matter.
14. On 12 May 2010, [the Solicitors] wrote to the Athletics Association and sent a copy of that letter to the Panel. In that letter, [the Solicitors] stated:

*"Our client has been asthmatic since the age of 27 which has obliged her to take a Ventolin inhaler on a regular basis. In the lead up to the Championship in Canada, she had been taking a nasal decongestant in spray form as her asthma had been particularly severe. Unfortunately, during the competition this nasal decongestant had been ineffective and she had purchased a nasal decongestant from a local shop. She took a decongestant on the evening before the [...] and also took a decongestant on the morning of the [...]. It has now transpired that the decongestant contains ephedrine.*

*You will note from our letter to the Irish Sport Anti-Doping Disciplinary Panel that our client has requested a Hearing Panel and at that Hearing Panel she will present in evidence the nasal decongestant. This will be supported by a witness, a fellow competitor, who was present when our client purchased the nasal decongestant the day before the event.*

*We will also be furnishing medical evidence to the Hearing Panel of our client's prior asthmatic history and confirmation of the nasal decongestants that she was taking leading up to the event. Our client's adverse finding is as a direct result of the nasal decongestant purchased by her whilst in attendance at the Championship and we are confident this will be borne out at the*

*Hearing Panel and reflected in the determination of the Hearing Panel.*

*Our client has been monitoring her reduced lung capacity resulting from the asthmatic attacks and we enclose a copy of her chart leading up to and the day of the competition."*

[the Solicitors] requested that the Athletics Association would not impose a provisional suspension in the circumstances.

15. In the course of the hearing on 18 May 2010 a further letter was produced in evidence. It was a letter from [the Solicitors] to Beauchamps, Solicitors acting for the Athletics Association, dated 14 May 2010. In that letter, [the Solicitors] stated:

*"The decongestant purchased by our client were ephedrine 8mg tablets. She took one tablet on the evening before the [...] and also took one tablet on the morning of the [...].*

*Our client also had ephedrine nasal drops and the dosage appears to be ephedrine 0.5% nasal drops (10ml. Solution). The nasal drops had been purchased by her from a Chemist in Ireland.*

*Our client also had a nasal spray, Beclometasone Hay Fever Relief Nasal Spray [Beclometasone Dipropionate] [50mcg per spray] which was prescribed by her General Practitioner."*

A copy of that letter had not been provided to the Panel prior to the hearing but was disclosed during the course of Ms. IS-4003 cross-examination by Mr. Rice of Beauchamps on behalf of the Athletics Association.

16. The Panel agreed to expedite the hearing. A date was fixed for the hearing on 18 May 2010.

17. In view of the fact that the Panel was prepared to expedite the hearing of the matter, the Athletics Association decided not to impose a provisional suspension.
18. Notice of the hearing was given to the IAAF and to the World Anti-Doping Agency (WADA). IAAF provided notice of its intention not to attend at the hearing. No response was received from WADA.

**C. THE HEARING ON 18 MAY 2010**

**(a) Parties Present**

19. The hearing took place on 18 May 2010. The composition of the Panel at the hearing was David Barniville SC (who chaired the Panel), Mr. Bill O'Hara (sports administrator) and Dr. Pat O'Neill (medical practitioner). Mr. Rice of Beauchamps Solicitors appeared on behalf of the Athletics Association. He was accompanied by John Foley, the Chief Executive Officer of the Athletics Association and its President, Liam Hennessy. Mark Kincaid of [the Solicitors] appeared representing Ms. IS-4003. Ms. IS-4003 was also present. She was accompanied by Ernest [...], a fellow competitor at the World Masters Games. Dr. Una May was present on behalf of the Irish Sports Council which was attending as an observer. Ms. Menton attended as Secretary to the Panel.

**(b) Sequence of Evidence and Submissions**

20. At the outset of the hearing it was noted by the Panel that as Ms. IS-4003 had admitted the alleged violation, it appeared to the Panel that having regard to the provisions of Article 10 of the Rules which imposed certain procedural and evidential burdens on the athlete, it seemed appropriate to the Panel that Ms. IS-4003 should present her case which would be subject to cross-examination on behalf of Athletics Association and thereafter the Athletics Association would present such evidence as it wished to present. There would then be submissions from both sides. The parties agreed with that proposed running order.



**(c) Ms. IS-4003 Evidence**

21. Ms. IS-4003 then gave evidence. A booklet of evidence had been submitted by [the Solicitors] on her behalf prior to the hearing. It gave details of her competitive athletics history dating back to 1979. She is now [...]. Initially, she was a [...] and [...]runner before moving into multi disciplinary events such as [...] at the age of 16 or 17. Ms. IS-4003 was taken through her profile by her solicitor, Mr. Kincaid. This involved details of her previous history in various events (including the [...] and [...]).
- It explained that she had been competing in Masters events from the age [...] . Following the retirement of her coach, she had been training herself. She competed in [...] Championships since 2004, taking part every year since then in various different disciplines with some considerable success. She gave evidence of her previous personal bests in relation to a number of different events and of her best times and results in 2009 and so far in 2010. It was explained that the purpose of doing so was to show that her times and performances had not been improving over the years and, in particular, between 2009 and 2010 and that there was no "spike" in her performance having taken the ephedrine tablets and/or nasal drops.
22. Ms. IS-4003 explained during the course of her evidence that over the course of her athletic career she had suffered at various times from asthma following a road traffic accident which she sustained at the age of 27. She provided extracts from her general practitioner records for various periods, namely, [...] and for the [...] 2010 (immediately before the event in Canada [...] 2010) and from [...] to [...] 2010 (immediately after the event). The extracts provided did undoubtedly show that Ms. IS-4003 had a history of asthma and various allergies including allergic (or vasomotor) rhinitis. She was prescribed medication by her general practitioner.
- She also gave evidence that she had several food and other allergies.
23. The extract from her general practitioner records for [...] 2010 showed that Ms. IS-4003 was prescribed with two inhalers and a nasal spray at that time. The first inhaler (which she called her "brown" inhaler)

was a Clenil Modulite cfc free inhaler 100mg / actuation. The second was what she called her "blue" inhaler which was a Salbutamol cfc free inhaler 100mg / puff. The third medication prescribed as of that date was a nasal spray which was a Beclomethasone Aqueous nasal spray (50 micrograms/dose with 180 doses). The Panel understands that the medication prescribed in this nasal spray was the same as that provided in the brown inhaler albeit at different concentration and with a different method of ingestion. Ms. IS-4003 gave evidence that she was in possession of a valid Therapeutic User Exemption (TUE) for these medications as required and no issue was taken about that during the course of the hearing. That is not a matter which concerned the Panel in this case.

24. Ms. IS-4003 also produced in evidence a flow chart showing the measurement of peak expiratory flow during the period from [...] 2010 to [...] 2010.
25. Ms. IS-4003 then explained the circumstances in which the violation occurred. She had taken part in the [...] Championships on [...] 2010. [...]. She also took part in [...] competition that day [...]. She did not compete on [...] 2010. On [...] 2010, she explained that she competed in the women's [...] race [...]. She describes having had "*major problems*" after that event. She put it as follows in the course of her evidence:

*"I had major problems. I wouldn't breathe. I was gasping very bad. I had pains in the chest. Everything was blocked. My nose, my chest, oxygen. I suppose it was the peak. I thought I couldn't get any worse than this. It was similar to what had happened when I had gone beforehand. Before I went I was really bad and this was where I would have gone to hospital if I was at home."*

26. She explained that she was taken to the medical tent where she received medical attention. She referred in evidence to an email from Dr. [...], Medical Director of [...] Games, dated 18 May

2010. Having commented on the change in the relative humidity over the previous couple of days and having noted that the change in humidity could affect some people with asthma, Dr. [...] stated:

*"When you were brought over to the medical area you were complaining of not being able to catch your breath after [...] race, with respirations of 28 shallow and gasping, pulse of 120 and hamstring muscle cramps.*

*After being on oxygen, reassurance to help slow your breathing down and icing your hamstrings you were released to the next event. Breathing returned to normal within fifteen minutes of arriving at the medical area."*

Ms. IS-4003 later explained that she was "really afraid of dying at that stage".

27. Ms. IS-4003 stated that following the treatment after [...] she took part in [...] put event under the supervision of the Track Referee who she said warned her that if she felt she was endangering her health she would disqualify Ms. IS-4003. In any event, Ms. IS-4003 competed in [...] event but did not finish within the top three.
28. Ms. IS-4003 then explained how it was she came to purchase the ephedrine 8mg tablets. It has to be said, however, that her evidence was somewhat confused as to precise sequence of events. The Panel does not believe that there is anything particularly sinister in this confusion and does not believe that she was being untruthful in her evidence. Ms. IS-4003 did, however, appear to find it difficult to piece together the precise sequence of events. She described how she was feeling on [...] 2010 initially by reference to her peak flow chart. She then explained that she was having difficulties breathing and difficulties with her nose and chest. She referred to the carpets in the hotel and the wall paper as irritants for her various conditions as were dust mites. She said that neither the asthma inhaler nor any of the other medication she had been prescribed was helping her. She indicated initially that Mr. [...], another Irish athlete competing in the Games, encouraged her to go to a chemist and get

something for her condition. This was on [...] 2010. She said that Mr. [...] said to her:

*"Come on we will go down and walk and see if we can see a chemist. I'll be with you".*

She said they went looking for a chemist, found a shopping mall but did not find any chemist. They did, however, find a couple of shops selling health foods and supplements, including a GNC store. The impression from this evidence was that it was Mr. [...] who encouraged her to go to try and find a chemist that Thursday. However, later under cross-examination by Mr. Rice Ms. IS-4003 said that it was during conversations with Dr. [...] both before and after the shot put event, that Dr. [...] and his wife had said that if she could *"possibly find"* some health stores which could be *"very helpful"* for her and that she took the name of two shops from those conversations, being Nature Plus and GNC. She said (again under cross-examination) that Dr. [...] and his wife gave her the names of the shopping mall where they had chemists and *"natural stuff"* and that she wanted a *"natural place"*. Subsequently, (under cross-examination again) she said that she agreed that Dr. [...] and his wife were referring her to a particular shopping mall and that they said that there were pharmacies in that shopping mall. She said that she had looked for a pharmacy for quite a while but was unable to find one.

29. The confusion continued when it came to describing what precisely occurred at the GNC store. Ms. IS-4003 stated in direct evidence that she was aware of the GNC chain of stores as it is advertised in magazines in Ireland such as Irish Runner. She explained that there was a young man (between aged 29 and 34) serving in the shop. She described him as an athlete. She said that she asked his advice for something to clear her nose as if her nose was clear she felt that it would have helped her chest and asthma. She felt this would help her sleep at night. She said that the sales assistant recommended ephedrine HCL tablets as a nasal decongestant. She said that she asked the assistant whether this was a banned substance and that he replied in the negative. He said that he could not sell a banned substance. He said that he had taken it and that it was very good. She said

that she looked at it, read the back of the label on the container and questioned the assistant as to whether he was an athlete and asked him in what events did he compete. She said that he was very knowledgeable and appeared to know what was banned and what was not banned. She said that he trusted his advice. It became clear (in both direct evidence and under cross examination) that Ms. IS-4003 was aware of ephedrine and of the permitted concentration of that substance. She noted that each tablet contained 8mg of ephedrine. She compared it to a product such as Sudafed. She stated (again under cross examination) that she would not have taken anything that would put her over the permitted level and that, in her view, an 8mg tablet would not have put her over the limit. She also said that she consulted with Mr. [...] before agreeing to purchase the substance. Mr. [...] evidence differs somewhat from Ms. IS-4003 evidence in that regard.

30. Having purchased the tablets, Ms. IS-4003 explained that she took one of the tablets between 2am and 6am during the early morning of [...] 2010. She took another tablet just after breakfast. She explained that she took the first tablet to clear her nose and to help her sleep. She took another one with breakfast and then proceeded to warm up outdoors for the [...] race which started at 13:55 on [...] 2010. She said that she was still sneezing but that her legs were strong and attributed this to the fresh air. She said that the medication that she had taken (including the ephedrine tablets) did not make any difference. She did not go back to the medical tent to enquire whether the product she had purchased was permitted or otherwise. Nor did she consult anyone else at that stage. She explained (under cross examination) that Dr. [...] was not in the medical tent on the Friday.
31. It emerged in the course of her cross-examination that in the letter from [the Solicitors] to Beauchamps of 14 May 2010, reference had been made to a further potential source of ephedrine, namely, ephedrine nasal drops which had been purchased by Ms. IS-4003 from a chemist in Ireland. A copy of that letter was provided to the Panel. She stated (under cross examination) that she tried taking these nasal drops on [...] 2010 and [...] 2010 but that these had made no

difference to her condition either. While it was surprising that Ms. IS-4003 had not referred to the fact that she was taking ephedrine nasal drops which she had obtained from a chemist in Ireland before it was raised with her under cross examination, the Panel does note that this information was provided in a letter, [the Solicitors], sent to Beauchamps on 14 May 2010. It could not be said, therefore, that there was any deliberate intention on her part to conceal the fact that she had also taken these nasal drops containing ephedrine.

32. Ms. IS-4003 solicitor referred her to the Doping Control Form which was filled in immediately after she completed [...] race on [...] 2010. The information contained in the Doping Control Form was provided by Ms. IS-4003 but apparently written down by the Doping Control Officer, [...]. The form was signed by Ms. IS-4003. The Doping Control Form contains a box in which the athlete declares the use of prescribed and non prescribed medications within the past 10 days. The box in Ms. IS-4003 form stated:

*"Asthma inhalers, Glucosamine, Vit. B, B12, Vit C, Vit D3, nose spray, Guarana, hair supplement".*

It was put to her both by the Panel and, under cross – examination, by Mr. Rice, that there was no reference in the Doping Control Form to the ephedrine HCL tablets purchased by her from GNC and taken by her on the morning of [...] 2010. While initially claiming that the reference to "nose spray" was intended to cover both the spray prescribed by her general practitioner on [...] and the nasal decongestant tablets in the form of the ephedrine HCL tables purchased by her, Ms. IS-4003 did accept that she had not declared the ephedrine tablets on the form. She did say, however, that the tablets were beside her bed in the hotel room and were there to be seen by the Doping Control Officer who she claimed had accompanied her to her hotel room. She then stated (again under cross examination) that her failure to declare the tablets was not intentional. She put the position as follows:

*"It wasn't intentional. The nose spray for the nasal congestion ... When she asked me what supplements I take I said I take vitamin*

*stuff and I take inhaler stuff and I have stuff for my nasal congestion and a hair supplement which I don't know the name of but we can go back to the hotel to get that."*

33. It was also put to her under cross examination that she had not mentioned the ephedrine nasal drops (referred to in the [the Sollicitors] letter of 14 May 2010) in the Doping Control Form. Her answer to that was that she referred to *"nasal spray for her nose or anything for the decongestion"*. She likened this to her description of the asthma inhalers noting that she had not specifically described the blue inhaler or the brown inhaler or given the specific names of those inhalers. The Panel draws attention again to the fact that while initially referring to the substance taken by Ms. IS-4003 which produced the adverse result as *"nasal spray"* (see the letter from [the Sollicitors] to Ms. June Menton of 7 May 2010) as a *"nasal decongestant in spray form"* (in the letter from [the Sollicitors] to the Athletics Association of 12 May 2010), [the Sollicitors] did correctly describe the substance as ephedrine 8mg tablets and also referred to the ephedrine nasal drops in their letter of 14 May 2010 to Beauchamps. The Panel accepts that the failure by Ms. IS-4003 expressly to refer to the ephedrine tablets or the ephedrine nasal drops was probably unintentional although it was undoubtedly careless on her part. The Panel does not believe that Ms. IS-4003 took a deliberate decision not to refer to either ephedrine product on the Doping Control Form. The express reference to the two ephedrine products in the [the Sollicitors] letter of 14 May 2010 is not consistent with an intention deliberately to conceal the substances taken by Ms. IS-4003.
34. In addition to competing in [...] [...] 2010, Ms. IS-4003 also competed in the [...] later that day and finished outside the medal positions. She also competed on the following day, [...] 2010, in [...] .
35. Ms. IS-4003 explained that following her return to Ireland after the event in [Canada], she sought further medical assistance for her asthma and other allergies. This is corroborated by the further extracts from Ms. IS-4003 general practitioner records contained in the booklet of

evidence submitted on behalf of Ms. IS-4003 prior to the hearing. It also emerged in evidence in response to a question from one of the Panel members that her dosage of the Clenil inhaler (the brown inhaler) had been increased from two puffs 100mg per actuation twice a day to two puffs of 100mg.

36. Ms. IS-4003 was asked about her personal circumstances. She is a student studying [...] . She also studies or provides [...].

When asked as to her attitude to drug taking in sport, she stated that she was "*totally against it*". She said that she gives talks in schools about children taking drugs and she is "*totally against even medication or supplements*". She concluded by stating that she was "*totally against any form of drug*". This was somewhat surprising in light of her decision to purchase and consume the ephedrine tablets prior to competing on [...] 2010. She also explained the consequences for her if the Panel decided to impose any period of ineligibility.

37. Ms. IS-4003 was then cross examined by Mr. Rice on behalf of the Athletics Association. Some aspects of her evidence under cross examination have already been adverted to. She was cross examined vigorously in relation to the circumstances in which she came to purchase the product from GNC and in relation to the Doping Control Form. Mr. Rice elicited from Ms. IS-4003 under cross examination that she was aware that ephedrine was a prohibited substance above a certain level but that she had felt, having looked carefully at the product, that the level of ephedrine in the tablets she had purchased would not bring her over the permitted level. She did disclose under cross examination that she had spoken with her brother (who is a nurse) by telephone prior to embarking upon her shopping expedition. However, she did not telephone him after having purchased the product to ascertain whether she should take it or not. Her attitude to that was that she had been "*at this 30 years, that's its minimal, very, very small*". She said that she "*would never have took (sic) anything that would*



*have put [her] anywhere near the limit*". She said that she took the product *"just to breathe"*. She said that it was *"only in absolute desperation that [she] would take anything"*. She described it as a *"absolute emergency"*. Noting that she had not consulted with anyone else, she did maintain that she consulted with Mr. [...]. In his evidence, however, Mr. [...] did not accept that he was consulted or had any input into the decision by Ms. IS-4003 to purchase or use the ephedrine tablets.

38. On questioning by various Panel members at the conclusion of her evidence, Ms. IS-4003 demonstrated further confusion as to the precise sequence of events in which she completed the Doping Control Form and in which she apparently ended up at her hotel room in the presence of the Doping Control Officer. The Officer concerned, Ms [...], did not give evidence so the position in that regard could not be clarified. Ms. IS-4003 also accepted that she was conscious of the permitted limit for ephedrine in her system although she added that *"you shouldn't really taken any ephedrine"*. She accepted that it was a matter for the athlete to know what was or was not permitted and that it was necessary for the athlete to make a conscious effort to check the various lists of permitted and prohibited substances.
39. In re-examination by her solicitor, Ms. IS-4003 appeared to accept that if the Doping Control Form was not filled out correctly that was a mistake. She also disputed any suggestion that there was any intention to deceive the Panel by not referring to the ephedrine nasal drops which had been referred to in the letter from [the Solicitors] to Beauchamps of 14 May 2010.

#### **(d) Mr. [...] Evidence**

40. Mr. [...] then gave evidence. He described his evidence as being *"fairly limited"* to the day that Ms. IS-4003 went to the health shop. He explained that he was present in the stadium when Ms. IS-4003 collapsed after [...] on [...] and that he and 8 or 9 Irish athletes present were very concerned about her condition. He explained that he did accompany Ms. IS-4003 to the health store. He said that he

remembered “*quite vividly*” what happened in the store as there was no one else present in the store other than Ms. IS-4003, Mr. [...] and the sales assistant. He said that Ms. IS-4003 spent approximately half an hour going around the shop looking at different products. He said that eventually Ms. IS-4003 asked the assistant what would he recommend (presumably having outlined her requirements). Mr. [...] said the sales assistant then produced the bottle of tablets. In response to a question from Ms. IS-4003 as to whether it was “legal”, the assistant replied that it was, that he was an athlete himself and that he competed and took the product. The assistant also said that he found that he had allergies himself and that he found the tablets good for those. He said that Ms. IS-4003 enquired again whether the product was “legal” and that the assistant said “*look ... this is a chain of health shops, one of many throughout Canada*” and he said “*if this was illegal we couldn’t sell it*”. Mr. [...] indicated that that was the extent of his involvement. He said that initially they looked for a chemist shop but that they could not find one and that that was how they ended up in the health shop. He also said that Ms. IS-4003 had not asked him his views as to whether or not she should buy or take the ephedrine tablets.

41. The Panel accepts Mr. [...] evidence in its entirety. On the basis of Mr. [...] evidence, the Panel believes that the decision to purchase and take the ephedrine tablets was Ms. IS-4003 alone based on her own understanding of the position and on her conversation with the assistant in the GNC store. Mr. [...] was not consulted about that decision and did not provide any advice to her about it.

(c) **Submissions on behalf of Ms. IS-4003**

42. On behalf of Ms. IS-4003, Mr. Kincaid submitted that Ms. IS-4003 had sourced the source of the ephedrine which led to the adverse analytical result in respect of her urine sample. He stated that the source was the ephedrine HCL tablets which she had purchased from the GNC store on the evening of [...] 2010. Mr. Kincaid submitted that Mr. [...] had given corroborating evidence confirming the purchase of those tablets and stressed the fact that the tablets themselves had been produced at the

hearing. He submitted that evidence was corroborated. He submitted, therefore, that Ms. IS-4003 had established the source of the ephedrine found in her urine sample.

43. Mr. Kincaid then submitted that Ms. IS-4003 had demonstrated that the ephedrine tablets had not been taken to enhance her sport performance or to mask some other performance enhancing substance. He referred to the fact that her performance records had indicated no improvement in her results. He also referred to corroborating evidence being medical evidence demonstrating that Ms. IS-4003 suffered from asthma and various allergies. He submitted that the level of ephedrine found in her sample was such that it would not indicate that the substance was being taken to enhance her sport performance. In that regard Mr. Kincaid referred to the decision of the Sports Disputes Tribunal of New Zealand in the case of ***New Zealand Rugby League v Laurence Erihe*** dated 4 April 2005. In particular, Mr. Kincaid referred the Panel to paragraph 82 of that decision where the New Zealand Sports Disputes Tribunal stated:

*"Given the opportunity for leniency in the case of violations involving specified substances, it makes it that much less likely that a competitor would want to conceal the source. If it were an unintentional violation then establishing the source (e.g. cough medicine) would go a long way to show there was no intention to enhance performance."*

Mr. Kincaid submitted that the fact that Ms. IS-4003 was able to identify the source, combined with the fact that the results showed a level of ephedrine just above the permitted level should be sufficient to satisfy the Panel that the substance had not been taken to enhance her sport performance or to mask some other performance enhancing substance.

44. While admitting that a mistake had been made, Mr. Kincaid submitted that there was no fault or negligence on the part of Ms. IS-4003. He described the violation as having occurred through a *"series of events involving significant problems with asthma and a series of days at the event leading up to the Wednesday when she had quite a frightening experience [...]"*

[...].” He submitted that that frightening experience required Ms. IS-4003 to seek urgent medical attention and that she was “*a frightened girl*”. He submitted that as a result of that Ms. IS-4003 set out to find something to try to alleviate her asthmatic symptoms and her breathing difficulties. He submitted that having spoken to representatives in the medical tent, Ms. IS-4003 went to search for a chemist but was unable to find one. He then submitted that it was reasonable for Ms. IS-4003 to have sought and relied on the advice of the member of staff in the health food shop from which the product was purchased. Mr. Kincaid submitted that she had done all that she could have done in the circumstances having regard to her “*state of mind*” and having regard to the information available to her. He submitted that the Panel should view this case as an exceptional one in which there should be no period of ineligibility. He submitted that there was a “*total absence of any intention*” but that there had been a “*terrible mistake*”. He submitted that the while Panel may decide that Ms. IS-4003 had acted “*carelessly*”, in the circumstances he submitted that Ms. IS-4003 had taken all reasonable steps. In those circumstances, he submitted that there should be no period of ineligibility. He also submitted that Ms. IS-4003 had a lot to lose if the Panel decided to impose a period of ineligibility and that this would affect the voluntary services provided by Ms. IS-4003 to [...]

[...] . Mr. Kincaid concluded by submitting that all the evidence pointed out a “*terrible mistake*”, that the substance had not been taken to enhance her sport performance and that in those circumstances the Panel should not impose any period of ineligibility.

45. In a response to a question on behalf of the Panel, Mr. Kincaid submitted that Ms. IS-4003 could not be held at fault, that she had had a frightening experience on the Wednesday, had tried to recover and did her best to take advice where to find appropriate medication and as to what medication she should take. He said that in those circumstances it would be “*very difficult*” to find fault on her part. In that regard, Mr. Kincaid referred to and relied on a portion of the decision of the Court of Arbitration for Sport (CAS) in the case of ***Federation Internationale de***

**Motocyclisme (FIM)**, award of 22 December 2000.<sup>2</sup> In particular, Mr. Kincaid referred to paragraphs 47 and 48 of the award of the CAS in that case. There, the CAS stated:

"47. *On the other hand, Appellant also admitted that he made a terrible mistake and acted carelessly. Indeed, he could have easily consulted a doctor or pharmacist about the content of [the product in question] instead of trusting the advice of his fitness trainer. This is all the more true since [the product] also contains a considerable amount of caffeine. His behaviour shows a certain degree of negligence which makes it necessary to raise the sanction above the minimum.*

48. *Taking all the aforementioned circumstances into account and bearing in mind the absence of any doping antecedent concerning the Appellant, the Panel considers a suspension of three weeks as adequate and appropriate*".

46. Mr. Kincaid sought to distinguish Ms. IS-4003 case from the case of the appellant in that case. Mr. Kincaid sought to contrast what Ms. IS-4003 had done in terms of accessing information faced with what he described as a "medical condition" requiring "emergency attention" with the facts of that case. Mr. Kincaid submitted that Ms. IS-4003 position should be treated far more leniently than that of the appellant in the **FIM** case.

#### **(e) Submissions on behalf of the Athletics Association**

47. In response and on behalf of the Athletics Association, Mr. Rice accepted that on balance of probabilities the Panel would probably find that Ms. IS-4003 had discharged the burden of showing how the specified substance had entered her body and that this was through a combination of the ephedrine tablets which she had purchased and consumed during the night and on the morning of the event on [...] 2010 and the ephedrine nasal drops she appears to have taken prior to the event.

---

<sup>2</sup> Arbitration CAS 2000/A/281 H.

However, Mr. Rice submitted that Ms. IS-4003 had failed to discharge the burden of establishing to the comfortable satisfaction of the Panel and on the basis of corroborating evidence that the substance had not been taken with the intention of enhancing her sport performance. Mr. [...] evidence could not corroborate any such lack of intention on the part of Ms. IS-4003. While accepting that the Panel could look at the totality of the circumstances in assessing whether corroboration was present, Mr. Rice submitted that the test was still a very high one. This issue is addressed in the very helpful written submissions furnished to the Panel by Mr. Rice.

48. Mr. Rice drew the Panel's attention to the Comment from the World Anti-Doping Code referable to the equivalent provision of the Rules to Article 10.3.<sup>3</sup> He stressed that the Panel had to be "*comfortably satisfied by the objective circumstances of the case that the athlete in taking or possessing a prohibited substance did not intend to enhance his or her sport performance*". The Comment then gives some examples of the type of objective circumstances which might lead a Hearing Panel to be comfortably satisfied of the absence of any such sport performance enhancing intention. The examples given by the World Anti-Doping Code in its Comment on the relevant article include:

*"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."*

The Comment continues:

*"Generally, the greater the potential performance enhancing benefit, the higher the burden on the athlete to prove lack of an intent to enhance sport performance."*

---

<sup>3</sup> The comment is reproduced at pages 6 and 7 of Mr. Rice's Written Submissions.

49. Mr. Rice submitted that it was a matter for the athlete to establish that the ephedrine at that time or in the dosage in question would not have been beneficial to her. Mr. Rice submitted that Ms. IS-4003 had failed to establish that. He also stressed the fact that the Doping Control Form did not refer to the ephedrine tablets or to the ephedrine nasal drops. Mr. Rice also drew attention to the fact that while contemporaneous medical records had been produced, and while they referred to nasal sprays, there are no reference in those medical records to ephedrine nasal drops or indeed to ephedrine tablets. Mr. Rice described the athlete as "*self-medicating*" with these products containing ephedrine. Mr. Rice submitted that the Panel should not be comfortably satisfied that what he referred to as this "*self-medicating*" was solely for the purpose of alleviating symptoms as opposed to there being some "*deeper motive*".
50. In response to a question from the Panel, Mr. Rice did accept that the level of ephedrine found in Ms. IS-4003 sample was relevant to this question. He further accepted that the corollary to the statement made in the Comment quoted also applied, namely, the lesser the performance enhancing benefit, the lesser the burden on the athlete would be to prove lack of intention to enhance sport performance.
51. Mr. Rice then advanced various submissions in relation to the interaction between Article 10.3 and Article 10.4 of the Rules. In essence, he submitted that if the Panel was satisfied and comfortably satisfied of the matters referred to in Articles 10.3.1 and 10.3.2, it then had to consider the provisions of Article 10.4.1 to see whether any period of ineligibility which the Panel might otherwise have been minded to impose ought to be eliminated in the event that the athlete could establish that she bore no fault or negligence. Further submissions were made in relation to the interplay between Article 10.3 and Article 10.4 of the Rules. Having regard to the decision reached by the Panel, it is not necessary to reach any concluded view on the more interesting aspects of the interplay between those two articles.

52. Mr. Rice submitted that even if the Panel was satisfied of the matters referred to in Article 10.3.1 and Article 10.3.2 to the requisite standard, Ms. IS-4003 had not satisfied the requirements of Article 10.4.1 in that she did bear some fault and was negligent. He referred in particular to the definition of "*No Fault or Negligence*" in the Rules. The term "*No Fault or Negligence*" is defined as follows:

*"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."*

53. Mr. Rice submitted that the evidence clearly established that Ms. IS-4003 did not exercise "*utmost caution*" in the manner in which she had used the Prohibited Substance. Mr. Rice submitted that Ms. IS-4003 must bear a degree of fault and that she was guilty of carelessness at least in the manner in which she purchased and used the substance. Mr. Rice drew specific attention to the fact that Ms. IS-4003 had not returned to the medical tent on the Thursday or on the Friday to ascertain whether she could take the substance, nor did she consult any nurse, any chemist or any other doctor. He drew attention to the fact that she did not telephone anyone at home in Ireland including her brother. While she gave evidence that she had contacted her brother beforehand and that he had recommended that she get something to deal with her symptoms, she did not revert to him to double check whether what she had purchased could properly be taken. Mr. Rice also drew attention to the non disclosure of the medication on the form. He submitted that this could be consistent with Ms. IS-4003 perhaps having formed the view that the substance she was taking together with the quantity of it would not be detected.
54. Mr. Rice opened a number of authorities from anti-doping panels around the world to the Panel noting that there are no Irish cases dealing with ephedrine. Mr. Rice produced a helpful book of authorities and went through a number of those authorities in support of his submissions. In particular, he noted that the first case which he could find involving



ephedrine was an award of CAS in the case of **USA Shooting & Q / Union Internationale de Tir (UIT)**, award of 23 May 1995.<sup>4</sup> It does not appear, however, that there is anything of assistance in that case. Mr. Rice then referred to the **FIM** award of CAS referred to earlier. In that case, the concentration of ephedrine found was slightly above the concentration found in the present case in the case of one of those samples analysed and higher again in the case of a further sample. Notwithstanding those levels, Mr. Rice noted that the CAS in that case had concluded that the behaviour of the athlete showed a degree of negligence which made it necessary to raise the sanction above the minimum permitted. A 3 week suspension was imposed. Mr. Rice then referred to the well known decision of the CAS in the case of **Baxter**.<sup>5</sup> However, he accepted that the substance at issue there was different and that the decision was probably of little relevance in light of the evidence given in this case.

55. Mr. Rice then referred to the decision of the Judicial Committee of the International Rugby Board in the case of **Berti**, dated 27 October 2006. In his Written Submission in relation to that case, Mr. Rice notes that notwithstanding that the rugby player in question had not been able to identify the substance he had used (and which had given rise to the adverse result) and despite the fact that there were contradictions in the evidence before the panel in relation to the claim of decongestant use, the Judicial Committee ultimately accepted that the player did not intend to enhance his sport performance. The Judicial Committee did not, however, feel that a warning and reprimand would be sufficient and noted the personal responsibility on all players. The Judicial Committee in that case noted that while the concentration of ephedrine in the players urine only modestly exceeded the reporting threshold (13 micrograms per millilitre of urine) (greater than the present case), the Judicial Committee was nonetheless of the view that had the player exercised appropriate care and attention in relation to his supplement use, a positive test may well not have occurred. The Judicial Committee in that case imposed a period of six weeks ineligibility on the player.

---

<sup>4</sup> Arbitration CAS 94/129.

<sup>5</sup> Arbitration CAS 2002/A/376.

56. Mr. Rice then referred to the decision of the Doping Tribunal of the Sport Dispute Resolution Centre of Canada in the case of **Boyle** dated 8 September 2006. In that case the level of ephedrine found in the sample was 30 micrograms per millilitre. The Doping Tribunal found that there was an insufficient explanation of how the substance came to be in her sample. Nonetheless, the Doping Tribunal concluded that the athlete did not have an intention to enhance her sport performance. The period of ineligibility imposed in that case was one year. On the facts, the Doping Tribunal was satisfied that the circumstances warranted imposing the high end of the scale of sanctions permitted.
57. Mr. Rice then referred to the decision of the Doping Tribunal of the Sport Dispute Resolution Centre of Canada in the case of **Bouchard** dated 17 October 2007. There, the level of ephedrine found in the athlete's sample was 14 micrograms per millilitre of urine (again higher than the present case). Mr. Rice drew specific attention to that part of the decision which concerned the absence of fault or negligence. The Tribunal concluded that the athlete had failed to establish the absence of fault or negligence. A six month period of ineligibility was imposed by the Tribunal in that case. It has to be said that the facts, from the point of view of the behaviour of the athlete, were far worse in that case than in the present case.
58. Mr. Rice referred to a number of other authorities including the case of **Erihe** (referred to earlier) in which the Sports Disputes Tribunal of New Zealand found that despite having been given many opportunities to do so, the athlete had failed to establish that the use in question was not intended to enhance sport performance. The athlete had further failed to establish how the substance came to be in his body. A two year period of ineligibility was imposed in that case. The facts of that case are clearly distinguishable from the present case.
59. Mr. Rice referred to another New Zealand decision in the case of **Mete** (22 May 2006). In that case, a three month period of ineligibility was imposed by the Sport Disputes Tribunal of New Zealand in the case of an athlete who tested positive for ephedrine which he had taken in the form of

ephedrine HCL tablets. It appears, however, that this case is of somewhat limited assistance in circumstances where the relevant provisions did not allow the Tribunal to consider sanctions for specified substances and it was not necessary for the Tribunal to consider whether the drug was intended to enhance sport performance.

60. Finally, Mr. Rice referred to a decision of the National Anti-Doping Panel of England in the case of the ***Rugby Football League v Andrew Brocklehurst***.<sup>6</sup> This also appears to be of somewhat limited assistance in that the sample was found to contain both ephedrine and a metabolite of cocaine. In any event, the player in question had failed to take any active part in the proceedings. A period of ineligibility of two years was imposed. However, as indicated, that case appears to be of limited if any assistance in the present case. It is again clearly distinguishable from the present case.
61. As regards the appropriate sanctions, Mr. Rice submitted that if the Panel were satisfied of the matters referred to in Articles 10.3.1 and 10.3.2 to the appropriate standard, the appropriate period of ineligibility should be somewhere between 3 and 6 months. On the other hand, if the Panel was not satisfied of those matters to the requisite standard, then even assuming Ms. IS-4003 could persuade the Panel that she bore "No Significant Fault or Negligence" under Article 10.4.2 the minimum period of ineligibility would be one year.
62. Mr. Rice also made submissions in relation to disqualification provided for in Article 9. He submitted that in relation to the competition following which Ms. IS-4003 tested positive on [...] (namely, the [...]) and the subsequent event at which Ms. IS-4003 [...] results and all medals, titles, points and prizes awarded should be disqualified and forfeited having regard to the provisions of Article 9.1 and 9.3 of the Rules. He also submitted that the Panel should request the ruling body of the event, namely, the [...], to consider whether the

---

<sup>6</sup> Final decision of the Anti-Doping Tribunal dated 5 November 2009.

medals obtained by her at the Games prior to the competition on [...] 2010 should also be forfeited under Article 9.2.1 of the Rules.

**(e) Responding Submissions**

63. Following Mr. Rice's submissions, the Panel adjourned briefly to enable Mr. Kincaid to respond to the submissions made by Mr. Rice and the detailed Written Submissions which had been received just prior to the hearing. Mr. Kincaid then replied to Mr. Rice's submissions. In the course of his reply, Mr. Kincaid submitted that on the totality of the evidence the Panel should be comfortably satisfied with the matters referred to in Article 10.3.2. He also sought to distinguish the case law relied upon by Mr. Rice.

**(f) Address by Ms. IS-4003**

64. Finally, Ms. IS-4003 sought and was granted the opportunity personally to address the Panel. She disputed the contention that she had not exercised the utmost caution and submitted that she had done so by seeking advice from Dr. [...]. She also felt that she had adequately questioned the assistant in the store from whom she had purchased the ephedrine tablets. She explained again that she felt she was forced to take the medication as she was afraid if she did not she would be faced with the same type of situation she had faced on [...] 2010. She further submitted that there was obviously no intention on her part of enhancing her sport performance. She referred to her performance statistics in respect of the [...] to demonstrate that she had not enhanced her sport performance. She emphasised that she just wished to compete and not to enhance her sport performance. She again referred to her medical problems as being the explanation for having to obtain the tablets. She conceded that she may not have taken a rational decision but stated that if she could have got to a doctor she would have done so. However, she said there was "*no way*" she could have got to a doctor. She also outlined how any suspension or period of ineligibility would be devastating for her.

65. The Panel the retired briefly to consider the evidence before returning to give its oral decision.

#### **D. THE DECISION**

66. As indicated above, the Panel was in a position to give its decision orally at the hearing on 18 May 2010. Having regard to the fact that Ms. IS-4003 admitted the alleged anti-doping rule violation almost immediately after she had been notified of the allegation by the Irish Sports Council in its letter of 27 April 2010, the Panel did not have to adjudicate on the issue as to whether a violation had occurred or not. The violation was admitted. The only matter, therefore, which the Panel had to decide was the appropriate sanction or sanctions to be imposed in respect of the admitted violation.
67. The range of sanctions or consequences which it was open to the Panel to impose in respect of the violation are set out in the Rules and, in particular, in Articles 9 and 10 of the Rules. Article 9 deals with the disqualification sanctions for individuals. Article 10 deals with the ineligibility sanctions. It is proposed to deal with these in reverse order. We deal first, therefore, with what we believe to be the appropriate sanctions to be imposed under Article 10 in respect of the violation. We then deal with the appropriate sanctions under Article 9.
68. Article 10 deals with "ineligibility". This, in essence, means a ban or suspension for a period of time. It is defined in the Rules as meaning that the athlete is "*barred for a specified period of time from participating in any competition or other activity or funding as provided in Article 10.8*". Article 10.8 sets out the status of an athlete during a period of ineligibility. Under Article 10.1 the period of ineligibility which must imposed for a first violation of Article 2.1 of the Rules is 2 years unless the conditions for eliminating or reducing that period of ineligibility as provided in Articles 10.3 and 10.4 are satisfied. There is also reference to the possibility of increasing the period of ineligibility if certain aggravating circumstances are present. These are provided for in Article 10.5. No case has been made for the existence of any aggravating circumstances in the present case. The

violation admitted by Ms. IS-4003 is a violation of Article 2.1 of the Rules. Therefore, unless the conditions for eliminating or reducing the period of ineligibility (as provided for in Articles 10.3 and 10.4) are satisfied, the period of ineligibility which the Panel would be required to impose upon Ms. IS-4003 would be 2 years as this is her first violation. The case has been made on behalf of Ms. IS-4003 that the conditions for eliminating or reducing the period of ineligibility provided for in Articles 10.3 and 10.4 are satisfied and that, therefore, the Panel should not impose any period of ineligibility.

69. Article 10.3 provides as follows:

***"10.3 Elimination or reduction of the period of ineligibility for specified substances under specific circumstances.***

*10.3.1. Where a Participant can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or mask the use of a performance-enhancing substance, the period of Ineligibility found in Article 10.1 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.*

*10.3.2. To justify any elimination or reduction, the Participant must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the Use of a performance enhancing substances. The Participant's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility."*

70. The substance found in Ms. IS-4003 sample was ephedrine. That is a Prohibited Substance and a Specified Substance under S6 of the World Anti-Doping Code, 2010 Prohibited List (International Standard). In the case of ephedrine, the substance is prohibited when its concentration in urine is greater than 10 micrograms per millilitre. The concentration of ephedrine found in Ms. IS-4003 sample exceeded the permitted level by a small degree. Nonetheless, the substance is still prohibited, albeit it is a Specified Substance, and its use by Ms. IS-4003 constituted a violation of Article 2.1 of the Rules.
71. In order to eliminate or reduce the period of ineligibility in the case of a Specified Substance, certain matters must be established by the athlete, in this case, Ms. IS-4003. In the first place, she must establish how the Specified Substance entered her body. The standard of proof in that regard is the balance of probabilities.<sup>7</sup> In addition, to benefit from the provisions of Article 10.3, Ms. IS-4003 must also establish that the Specified Substance was not intended to enhance her sport performance or to mask the use of a performance enhancing substance. Article 10.3.2 imposes some additional requirements on the athlete who seeks to establish this. Under Article 10.3.2, the athlete must produce corroborating evidence in addition to his or her own word. Such corroborating evidence must establish to the "comfortable satisfaction" of the hearing panel the absence of any intention to enhance her performance or to mask the use of a performance enhancing substance. The burden of proof on the athlete to establish these further matters is somewhat higher than the balance of probabilities. They must be established to the "comfortable satisfaction" of the Panel. The standard required is greater than the balance of probabilities but less than the criminal standard of beyond reasonable doubt.
72. If Ms. IS-4003 establishes these matters to the requisite standard, the range of sanctions in terms of ineligibility open to the Panel is from, at a minimum, a reprimand with no period of ineligibility to a maximum of a period of ineligibility of 2 years. This would replace the otherwise

---

<sup>7</sup> See Article 8.4.3 of the Rules.

mandatory period of 2 years under Article 10.1. Article 10.3.2 provides further guidance to the Panel as to the appropriate period of ineligibility to impose in any particular case by expressly stating that:

*"The Participant's degree of fault shall be the criterion considered in addressing any reduction of the period of ineligibility".*

73. It is in that context that the Panel must assess the evidence in order to determine whether Ms. IS-4003 has established on the balance of probabilities how the ephedrine entered her body, and, on the basis of corroborating evidence in addition to her word, whether she has established, to the comfortable satisfaction of the Panel, that she did not have any intention to enhance her sport performance or to mask the use of a performance enhancing substance by taking ephedrine tablets or the ephedrine nasal drops prior to the competition on [...] 2010.
74. Dealing first with the circumstances in which the substance entered her body, there does not seem to be any real dispute between the parties on that issue. The Athletics Association, while not conceding the point, did not forcefully argue that Ms. IS-4003 had not discharged the burden of establishing how the ephedrine entered her body. In any event, the Panel is satisfied on the balance of probabilities that Ms. IS-4003 has established on the evidence that the source of the ephedrine found in her sample was two-fold, namely, a combination of the 2 ephedrine tablets taken by her during the early morning and after breakfast on [...] 2010 and the ephedrine nasal drops used by her the previous day. In the opinion of the Panel, the evidence points overwhelmingly to these as being the combined source for the ephedrine identified in her urine sample taken following the race on [...] 2010.
75. The Athletics Association did, however, argue that Ms. IS-4003 had failed to establish to the comfortable satisfaction of the Panel and on the basis of corroborating evidence in addition to her word, that she did not take the ephedrine tablets or use the ephedrine nasal drops with the intention of enhancing her sport performance. It should be said that there was no suggestion made that she did so for the purpose of masking the use of



some other performance enhancing substance. The Panel does not accept that argument made by the Athletics Association. The Panel is satisfied on the evidence, including corroborating evidence adduced by Ms. IS-4003, that she did not take the ephedrine tablets or use the ephedrine nasal drops with the intention of enhancing her sport performance. The Panel accepts the evidence given by Ms. IS-4003 which was corroborated by the medical evidence produced that she had a number of pre-existing medical conditions, namely, bronchial asthma manifested by a shortness of breath and difficulty with breathing and allergic or vasomotor rhinitis manifested by symptoms of nasal congestion (blocked nose) and rhinorrhoea (runny nose). The Panel is satisfied that there is ample corroborating evidence that Ms. IS-4003 suffered from these pre-existing medical conditions. The Panel is also satisfied that on the evidence those pre-existing medical conditions were exacerbated while she was competing at the [...] in [...] 2010. The Panel accepts that particular difficulties were experienced by Ms. IS-4003 during the course of, and immediately following, the [...] race on [...] 2010. This is corroborated by an email received from Dr. [...], Medical Director at the Games, and by the evidence of Mr. [...].

76. While the Panel did get the impression that Ms. IS-4003 was prone to exaggeration in respect of certain aspects of her evidence and while other aspects were confusing (as indicated earlier in the Decision), the Panel does believe that Ms. IS-4003 was a truthful witness who did her best to recollect the precise sequence of events involved in both the purchase of the ephedrine tablets and the completion of the Doping Control Form.
77. On the basis of her evidence and the corroborating evidence referred to, the Panel is satisfied to its comfortable satisfaction that Ms. IS-4003 purchased and used the ephedrine HCL tablets obtained from the GNC store in [Canada] and the ephedrine nasal drops which she obtained from a Chemist in Ireland for the purpose of alleviating her symptoms of nasal congestion with a view to assisting her sleep. The Panel is satisfied, therefore, on the evidence and to its comfortable satisfaction that she used the medication (in both forms) to treat acute exacerbations of her

pre-existing medical conditions rather than with any intention to enhance her sport performance.

78. In those circumstances, the range of sanctions open to the Panel in terms of ineligibility is from, at a minimum, a reprimand with no period of ineligibility to, at a maximum, a period of ineligibility of 2 years.
79. In considering whether there should be any reduction of the period of ineligibility in circumstances where the Panel is satisfied to the requisite standard of the matters set out in Articles 10.3.1 and 10.3.2, it is made clear in Article 10.3.2 that the athlete's degree of fault "*shall be the criterion considered*". It is, therefore, necessary to address whether the facts demonstrate that Ms. IS-4003 was at fault in the sense of bearing some responsibility for the violation.
80. As Ms. IS-4003 accepted in evidence, it was her personal duty and responsibility to ensure that she did not permit a Prohibited Substance to enter her body. The Panel is of the view that Ms. IS-4003 acted with a degree of carelessness in using the Specified Substance. She is an experienced athlete of many years. She is a student [...] and [...]. The evidence disclosed that she was aware that ephedrine was a Prohibited Substance above a certain level and that she was conscious of the relatively low dosage of ephedrine tablets taken by her (8mg per tablet). While she did ask the sales assistant in the store whether the tablets contained a banned substance and whether they could legitimately be taken, and while she had satisfied herself as to the relative expertise of the sales person, she did not seek advice from the Medical Director of the Games or any of his staff. The Panel is of the view that Ms. IS-4003 ought to have sought out and obtained advice from the Medical Director or other personnel in the medical tent. If she had done so, the Panel believes that it is quite likely that she would have been warned not to take the tablets particularly in circumstances where she was also using, on an intermittent basis, ephedrine nasal drops obtained from a chemist in Ireland. At the very least, the Panel believes that Ms. IS-4003 ought to have contacted her brother (who is a nurse in Ireland) and discussed the implications

of taking the ephedrine tablets. The evidence suggested that Ms. IS-4003 did speak with her brother by telephone before trying to find a chemist or health shop but did not do so at the time of purchase or prior to taking the tablets. Again, had she done so, it is quite likely that she would have been warned by him about the risk of taking those tablets.

81. Bearing in mind the personal responsibility which rested on Ms. IS-4003 to ensure that a Prohibited Substance did not enter her body, the Panel is of the view that had she exercised appropriate care and attention she would probably not have taken the tablets during the night and early morning of [...] 2010. The present case is, therefore, somewhat similar to the case of ***Berti*** (referred to above) which was decided by the Judicial Committee of the International Rugby Board in October 2006. The Panel is of the view, therefore, that Ms. IS-4003 was careless in failing to obtain advice from the Medical Director or other medical personnel in the medical tent at the Games before taking the tablets or, alternatively, by failing to consult with her brother (a nurse) before doing so. To that extent, therefore, the Panel believes that Ms. IS-4003 bears some fault in relation to the circumstances of the violation.
82. The Panel considered that the appropriate ineligibility sanction for Ms. IS-4003 in the circumstances was a reprimand and a period of ineligibility of 8 weeks. The Panel then had to consider whether there was any basis for eliminating that otherwise applicable period of ineligibility under the provisions of Article 10.4.1. Under Article 10.4.1, if an athlete can establish that he or she bears "*No Fault or Negligence*" then the otherwise applicable period of ineligibility must be eliminated. The term "*No Fault or Negligence*" is defined in the Rules (and the definition has been set out earlier in this Decision). The Panel does not believe that Ms. IS-4003 has established that she bore "*No Fault or Negligence*" in respect of the violation. Ms. IS-4003 was aware that ephedrine over a particular level was a Prohibited Substance. The Panel believes she did not act reasonably and exercise "*utmost caution*" in the manner in which she purchased and took the ephedrine tablets. There were steps which she could have taken to ascertain whether there was a risk that by taking the tablets she would put herself above the permitted limit. Those steps involved consulting the

relevant medical personnel at the Games or, at the very least, her brother in Ireland. She did not take those steps. She relied on her own knowledge and on the advice which she had been given by the sales assistant in the GNC Store. In the view of the Panel that fell short of exercising "*utmost caution*". In those circumstances, the Panel finds that Ms. IS-4003 has not established that she bore "*No Fault or Negligence*". There is, therefore, no basis for eliminating the otherwise applicable period of ineligibility.

83. While it is not necessary for the Panel to resolve the complicated relationship between Article 10.3 and Article 10.4.2 of the Rules, the Panel does not believe that there is any basis for further reducing the period of ineligibility under that sub-article.
84. The period of ineligibility which the Panel believes is appropriate in the present case is, therefore, a period of 8 weeks. The Panel also believes that it is appropriate to reprimand Ms. IS-4003 for the violation. As Ms. IS-4003 admitted the violation almost immediately after it was notified to her by the Irish Sports Council in its letter of 27 April 2010, the Panel believes that it is appropriate to commence the period of ineligibility at a date prior to the date of the hearing. The Panel is entitled to select an earlier date under the provisions of Article 10.7.2 in the case of a timely admission of a violation by an athlete. The Panel believes that the appropriate date on which the period of ineligibility should commence is 27 April 2010, being the date of the Irish Sports Council's letter. Therefore, the period of 8 weeks ineligibility will run from 27 April 2010.
85. The next relevant sanction to consider is disqualification which is provided for in Article 9 of the Rules. Article 9.1 of the Rules provides that an anti-doping rule violation committed in connection with or arising out of a test conducted in-competition "*automatically leads*" to disqualification of the individual results obtained by the athlete in the relevant competition with further consequences including the forfeiture of any medals, titles, points and prizes in that competition. The "*competition*" is the particular race following which the violation is detected. In the present case, therefore, the relevant competition is the woman's [...]. As a

consequence of the admitted violation, Ms. IS-4003 result in that race is disqualified [...] and title are forfeited together with any further points and prizes which may have been awarded in connection with her win in that race. This is an automatic consequence of the violation.

86. Ms. IS-4003 competed later that day, [...] 2010, in [...] [...] and on the following day, [...] 2010, in [...] race in [...]. Under Article 9.3 of the Rules, her result in that latter race would also be disqualified with the consequent forfeiture [...] associated with her result in that race "*unless fairness requires otherwise*". Furthermore, her result and any points or prizes associated with her participation in [...] [...] should also be disqualified and forfeited. The Panel is not satisfied that a case has been made to the effect that fairness does otherwise require. In those circumstances and having regard to the provisions of Article 9.3, Ms. IS-4003 result in [...] race [...] 2010 is also disqualified with the consequent forfeiture [...] associated with it as is her result in [...].
87. The Athletics Association invited the Panel to consider recommending to the organisers of the [...] Games that the medals obtained by Ms. IS-4003 at the Games prior to [...] 2010 should also be forfeited and her results disqualified under the provisions of Article 9.2 of the Rules. The Panel does not believe that it is appropriate to issue any such direction or communication. There is no evidence that Ms. IS-4003 took the ephedrine tablets prior to [...] 2010. Nor is there any evidence that any of the ephedrine nasal drops which Ms. IS-4003 may have taken prior to that date could have led to a positive test result. The Panel accepted Ms. IS-4003 evidence as to the date and circumstances in which she purchased the ephedrine tablets in Canada. In those circumstances, even if the Panel had the power to issue direction or communication to the organisers of the Games (and the Panel is not deciding one way or another whether it has such power), the Panel does not believe that it would be appropriate to do so on the facts of this case.

88. In conclusion, the Panel recommends that Ms. IS-4003 obtains a full assessment and review of her medical conditions by a sports physician with a specific interest in track and field athletics and respiratory medicine specialist, in conjunction with her own general medical practitioners, in order to identify the appropriate medications for prevention and treatment of her medical conditions (principally bronchial asthma and allergic or vasomotor rhinitis) in order to avoid a similar situation arising in the future, particularly in view of the combination of her symptoms of nasal congestion, rhinorrhoea, shortness of breath and difficulty with breathing. The Panel believes that this will reduce the risk of future adverse analytical findings in her case as well as leading to the optimal management of her medical conditions. This is not, of course, a binding ruling of the Panel but merely a recommendation in light of the evidence which the Panel has heard in this case.
89. Finally, the Panel again wishes to thank its Secretary, Ms. June Menton, for her hard work and assistance in relation to these proceedings.
90. The Panel would also like to thank the parties and participants in the proceedings for their assistance.

Dated the 11 day of June 2010

---

Signed on behalf of the Panel by

David Barniville S.C.

Chairman