DECISION

issued by the

IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL

sitting in the following composition:

Chairperson:	The Hon. Mrs. Justice Fidelma Macken
Panel Member:	Dr. Rachel Cullivan-Elliott, medical practitioner
Panel Member:	Mr. Warren Deutrom, sports administrator

in the disciplinary proceedings between

SPORT IRELAND

(a statutory body)

-and-

IS-7129

Held on the 22nd April 2020

INTRODUCTION

1. This is the Decision of the Irish Sport Anti-Doping Panel ("the Panel") in disciplinary proceedings brought by Sport Ireland against an athlete, [IS-7129], under the Irish Anti-Doping Rules 2015 (the "Rules" save where the context otherwise requires).

2. Miss [IS-7129] ('the Athlete") was, at the material time to the events described below, a 31 year old amateur wrestler who had competed in that sport for a short period of time, having transferred from another sport, believed to be in the weight lifting field Sport Ireland alleges that she committed three anti-doping rule violations within the provisions of Article 2.1 of the Rules, by virtue of the presence of certain prohibited substances (or one or more of its or their metabolites or markers) in a urine sample provided by the Athlete during In-Competition testing on the [...] 2019.

3. The Panel heard the case against the Athlete on the 22nd April, 2020 by remote facility, in order to determine the existence or otherwise of the alleged violations, and to apply any sanctions in accordance with the Rules, in the event of any of those alleged violations being established.

A. Brief Background Facts as Presented:

1. Sport Ireland is a statutory body established pursuant to the provisions of the Sport Ireland Act 2015 ("the Act of 2015"). In accordance with the provisions of that Act, its functions include, *inter alia,* encouraging the promotion, development, and coordination of competitive sport, including taking such actions as it considers appropriate. These include arranging for the testing of athletes for the presence of prohibited substances, both in and out of competition, in order to combat doping in competitive sport.

2. The Athlete took part in a wrestling competition - the "[...] 2019" on the [...] 2019, organised under the auspices of the Irish Amateur Wrestling Association ("the IAWA").

3. The Athlete was tested "in competition" on that date for the presence of any drug substances falling within Rules, being those on the World Anti-Doping Agency ("WADA") Prohibited List of 2015 (amended in 2019). She did not object to the test, and signed the appropriate Doping Control Form, disclosing the substances she said she had ingested in the relevant period. The Doping Control Form was signed by the Doping Control Office and by the Athlete. None of the substances which are the subject of this Decision were included by the Athlete in that form.

4. In compliance with the Rules, and with established testing procedures, the urine sample taken was divided among two separate containers, given appropriate references as an "A" sample (A4503248) and a "B" sample (B4502348). These were transmitted to a laboratory in Cologne, Germany, accredited by WADA, known as the Deutsche Sporthochschule Koln Institut fur Biochemie ("the laboratory").

5. Under the Rules, the A sample is tested, and the results of the tests are furnished to Sport Ireland, and then to an athlete. The B Sample is retained at that stage, but is not tested. Only if an athlete requests this, is that latter B sample then also tested.

6. The results of the tests on the A Sample were notified to Sport Ireland by means of an Analytical Report of the laboratory, dated the [...] , 2019. The Report disclosed the presence of three prohibited substances or their metabolites or markers in the sample tested, that is, an Adverse Analytical Finding (an "AAF"). These substances were, respectively, the following:

(i) epi-stanozolol glucuronide (stanozolol) (S. 1.1. Anabolic Agent);

(ii) 4-methylhexan-2-amine (methlyhexaneamine) (S. 6 Stimulants);

(iii) 5-methylhexan-2-amine (1,4dimethylpentylamine (S. 6 Stimulants).

Note: These S. 1 and S. 6 references are to the various sections of the WADA Prohibited List which have equivalent sections in the Irish Anti-Doping Rules.

7. Sport Ireland notified the Athlete by letter of the 3rd December 2019 of the alleged Rule breaches arising from the AAF. In that letter the Athlete was also informed of several important matters, apart from the formal alleged anti-doping rule violations just mentioned. The letter was clear and readily understandable. A detailed schedule was attached to this letter, in which several documents were listed, and guidance on where to access Sport Ireland Rules or similar.

8. First, she was advised that she might wish to get assistance from a legal adviser and that, if she had any queries, she should feel free to contact Sport Ireland. She was also told that having carried out an Initial Review (A Certificate of Initial Review was included in the schedule), Sport Ireland was of the view she had committed anti-doping rule violations contrary to the Rules, and that she was being formally charged with the following

"Article 2.1 – the presence of a prohibited substance or its

metabolities or markers in (her) sample."

9. The possible penalties, including being banned from competition for two to four years (known as a "Period of Ineligibility"), were set out, and – she was told - Sport Ireland would seek a four-year ban. In light of the Initial Review carried out by it, she was being provisionally banned from the 4th December 2019. It was explained to the Athlete, however, that if could established certain matters, she might be entitled to a reduced sanction under the Rules. She was told what physical products

and other evidence she should make available to Sport Ireland in order to support any application for a reduced sanction.1

10. Appendix 1 attached to the letter of the 3rd December 2019 gave further details, and information on where she could access Sport Ireland materials on the internet. In the letter, she was told of her obligation to respond to the letter, and of the consequences flowing from a failure to do so.

11. Although the Athlete responded to this notification, in due course she did not request that the B sample be analysed. Nor did she appeal the provisional ban.

B. The Period following the above notification prior to the Panel Hearing on the 22nd April 2020

1. The Rules provide that a consultation procedure may take place. Some exchanges took place between the Athlete and Sport Ireland subsequent to the notification to her of the 3rd December, 2019, to which there was no formal response by letter, and no formal admission of the charge. On the 15th December the Athlete by email sought a meeting with the Panel. Sport Ireland wrote and sought to know the reason for such a meeting.

2. On the 17th December, 2019, the Athlete wrote to Sport Ireland, making certain statements relating to the events which had occurred. This was responded to on the same day on behalf of Sport Ireland. This letter set out further useful information for the Athlete to consider in relation to the Panel, and she responded on the 7 January, 2020 with greater detail. No resolution of the matter occurred however.

3. It appears to the Panel that, at that point, and notwithstanding the clear and helpful letters written by Sport Ireland, the Athlete did not accept the formal procedures provided for under the Rules, and the fact that she could not deal with a Panel (that might be appointed), in the very informal manner she had envisaged.

4. A Panel was constituted in due course accordance with the Rules, consisting of Dr. Rachel Cullivan-Elliott (medical practitioner), Mr. Warren Deutrom (sports administrator), to be chaired by Mrs. Justice Macken (Vice-Chair). The parties were duly informed of this in the usual way.

5. The Athlete also engaged in correspondence with Mr. Healy, of DAC Beachcroft, solicitors acting for Sport Ireland and with the Registrar to the Panel. Mr. Healy solicitor and Mr. Nugent, Registrar, both assisted the Athlete with any queries she had relating to the charge made by Sport Ireland and to the Rules, and subsequently in relation to the Panel.

C. The Hearing before the Panel on the 22nd April 2020

Preliminary:

A. In light of the circumstances surrounding the existence of the Coronavirus Covid-19 around the World, including in Ireland, and the recommended practices in relation to its control, it was not possible to convene a hearing at which all the parties could attend together physically. The Hearing before the Panel took place "remotely" via an appropriate internet facility.

B. No technical difficulties occurred during the course of this hearing which would or might endanger either the ability for Sport Ireland to make such legal submissions it wished, for the Panel and its members to ask questions, or for others in attendance to be heard. In the circumstances, the Panel is satisfied that the hearing was secure and that it is in a position to deliver this Decision with confidence.

C. There was no appearance by or on behalf of the Athlete during the hearing. There was ample evidence before the Panel of the attempts made by Sport Ireland's Director of Doping & Ethics and by its solicitor, as well as by the Registrar to this Panel, to encourage the Athlete to attend, and to advice or suggest that she be represented. The Panel is satisfied that all proper efforts were made by those parties to the Athlete, to encourage her attend the Hearing, whether alone or with legal representation, and including before the Panel sitting remotely. The Athlete informed the Registrar she would not be attending the Hearing. The Panel regrets her absence/non-attendance.

Attendances:

1. In attendance at the Hearing were: Mr. Aidan Healy, solicitor, and Mr. Sean Coady, solicitor, both of DAC Beachcroft, solicitors, Dublin, on behalf of Sport Ireland, and Ms. Siobhan Leonard, Director of Anti-Doping & Ethics, Sport Ireland. Mr. Daniel Kennedy of the Irish Amateur Wrestling Association ("IAWA") attended as an Observer, representing that body.

2. The Panel comprised Dr. Rachel Cullivan-Elliott (a medical practitioner), Mr. Warren Deutrom (a sports administrator), and Mrs. Justice Fidelma Macken, S.C., acting as chair.

3. The Registrar to the Panel was Andrew Nugent, B.L. The Panel was ably assisted by the presence of Ms. Deirdre Gallagher, stenographer, of Gwen Malone Stenography Services, Dublin, who transcribed evidence presented and arguments made during the course of the hearing, and who provided a written transcript of the same.

4. The Panel is grateful to all parties who were in attendance.

5. The Athlete did not attend, and was not represented at the Hearing.

D The Submissions on behalf of Sport Ireland.

1. DAC Beachcroft, solicitors, had filed detailed written submissions on the 13th March 2020 on behalf of Sport Ireland in support of its contention that there was more than adequate evidence to establish that the Athlete had committee anti-doping rule violations with which she had been charged. These written submissions also suggested that the Athlete had admitted the violations. There were no written submissions filed by or on behalf of the Athlete.

2. In the absence of the Athlete, the Panel enquired as to how the alleged admissions would be proven. Mr. Healy, solicitor, very properly indicated his intention not to rely on those alleged admissions, but instead, would establish the rule violations on the basis of the several other factual matters and the evidence addressed in the written submissions, and in his intended oral submissions, including the several formal documents existing in relation to the taking of the tests, the analytical results of the A Sample, as notified, the Certificate of Initial Review, and other documents of a formal technical or scientific nature which were available, as well as the presumptions permitted under the Rules, where necessary or desirable.

3. The written submissions were helpfully divided into those relating, first, to the establishment of the anti-doping rule violations, and then to the sanction consequences flowing from the violations, if proven. Dealing with liability, Mr. Healy reminded the Panel of the fact of the production of the urine sample, and the absence of any objection to this; to the division of the sample into an A Sample and a B Sample; to the sending of the A sample, to the WADA accredited laboratory in Cologne, Germany, to the formal technical/scientific results emanating from that laboratory as furnished to Sport Ireland Finding, and the AAF already mentioned; and to the specific breaches of the Rules as established by the Report from the laboratory, namely, the three individual breaches of Rule 2.1 as set out earlier in this Decision.

4. Mr. Healy also referred to several relevant Rules, including Article 2.1.1 relating to the duty on every athlete to ensure that no prohibited substance enters his or her body; under the same sub article, it not being necessary therefore that intent (or knowledge or even negligence or knowing use) be demonstrated in order to establish an anti-doping rule violation. He also pointed out that under Article 2.1.2. of the (mere) presence of a prohibited substance (or its metabolites or markers) is sufficient proof of a violation where an Athletes waives the right to have the B Sample analysed, and it has not been, as here. Article 2.1.1 of the Rules provides as follows:

> *"It is each Athlete's personal duty to ensure that no Prohibited substance his or her body. An Athlete is responsible for any Prohibited*

Substance or any of its metabolites or markers found to be present in his or her Sample. Accordingly it is not necessary that Intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to demonstrate an Anti-Doping Rule Violation under Article 2.1"

5. Mr. Healy also referred to the presumption found in Article 2.1.2 of the Rules:

> *"Sufficient proof of an anti-doping rule violation under Article 2.1* [of the Rules] is established by any of the following:
>
> *2.1.2.1 The presence of a Prohibited Substance or any of its metabolites or markers in the Athlete's A Sample where the Athlete waives his or her right to have his or her B Sample analysed and the B Sample is not analysed.*
>
> ... ."

6. He referred to yet another presumption found in the Rules relating to testing of the sample by the laboratory. Under the provisions of Article 8.4.6 of the Rules, the laboratory is presumed to have conducted sample analyses in accordance with the International Standard for Laboratories. It states:

> "WADA -accredited laboratories, and other laboratories approved by WADA shall be presumed to have conducted Sample analysis and custodial procedures in accordance with the applicable International Standards for Laboratories."

7. This presumption may be rebutted by an Athlete, although, as a condition precedent, an athlete must notify WADA, and thereafter, there follow certain procedures. An athlete would have to establish a departure from the International Standard for Laboratories and also that this could reasonably have caused the adverse findings. In the present case, Mr. Healy says no challenge was mounted to the security of the testing methods at the WADA accredited laboratory in Cologne.

8. Mr. Healy submitted that, in the circumstances of the materials available to Sport Ireland, as presented, and to the various presumptions existing under the Rules, including those mentioned, sufficient proof of an anti-doping rule violation had been established as against the Athlete in respect of all three prohibited substances.

9. It was appropriate at this stage, having regard to the fact that the Athlete did not appear and was not represented, that Mr. Healy nevertheless also made submissions as to any possible grounds provided for in the Rules under which the full rigour of the sanction provisions might not apply to the Athlete in the present case.

10. In relation to these, Mr. Healy relied on the contents of certain emails which were sent by the Athlete to Sport Ireland, even though the Athlete was not in attendance to prove her contentions as expressed in these email contacts, or as to the true meaning to be attached to them. this being a matter predominantly for

Sport Ireland, and in light of the obligation on the Panel to consider any matter which might be in amelioration of the sanctions to be imposed, under the Rules, the Panel did not object to this approach.

11. First, he drew the Panel's attention to several provisions of Article 8 of the Rules, relating to a possible defence available to an athlete, based on a product consumed or ingested by an athlete being a "contaminated" one, which, if established, allows for a reduced period of any ban. A contaminated product, he explained, is one which contains a prohibited substance which is not disclosed on the product label, or in information available to an athlete by means of reasonable internet searches.

12. Under the Rules, if an athlete has admitted the violation but can establish the foregoing and can also show", no significant fault" and "no negligence, then the ineligibility period may range from 0 – 2 years – the range being dependent upon the degree of fault of an athlete, and the substance.

13. In the case of the Athlete, Mr. Healy drew the Panel's attention to a possible suggestion in an email in mid-December that some product she was taking "may have had something to do" with the prohibited substances found in the A Sample. He reminded the Panel of the contents of the Sport Ireland letters of the 3rd December 2019, and subsequently to the Athlete, on how she might establish such a defence.

14. He clarified that the Athlete repeated in January 2020 that a medication she was taking for a skin condition, and/or for a chest infection may have resulted in the stanozolol (not a specified substance) and the other substances (both specified substances), being present in the A sample but was not listed as being present on the label of the medication taken. She made the same suggestion also in relation to some "pre-trainers"as concerns only the two other specified substances (in relation to the alleged medication, the Athlete did not have a TUE).

15. Mr. Healy pointed to what the Rules require an athlete to establish – at least - before the contaminated product defence can be entertained by the Panel:

(i) that an athlete took the product relied upon;

(ii) that this resulted in the positive test found in the sample;

(iii) that the prohibited substance does not appear on the label;

(iv) that the prohibited substance is not disclosed in information available in a reasonable internet search carried out; and

(v) the athlete carried out such a reasonable internet search.

That internet search must be carried out prior to taking the prohibited substance, and the athlete must not otherwise bear a significant fault or be guilty of negligence in relation to the same.

16. Mr. Healy submitted that, although highlighted to the Athlete in the 3rd December, 2019 letter and in the Annex to it, as well as later, she had not dealt with any of them, still less establish any one of them. On the contrary, the communications from the Athlete suggested she did not make internet searches. She could therefore not rely on the provisions of the Rules to claim a reduced sanction.

17. As to the normal sanctions applicable under the period of ineligibility applicable in the case of an established rule violation, Mr. Healy drew attention to the broad range of provisions of Article 10 of the Rules. For a violation of Article 2.1, the normal period is 4 years under Article 10, where this does not involve a "specified substance", unless an athlete can establish that the anti-doping rule violation was not intentional. He confirmed that stanozolol (the first of the above-mentioned prohibited substances), is not a specified substance. Four years was therefore the appropriate ban in the case of the first substance found to have been present. *(emphasis added).*

18. For the second and third prohibited substances listed in the Report from the laboratory, he said these prohibited substances are both "specified substances", in respect of which the period of ineligibility is two years according to Article 10.1.1, unless Sport Ireland itself can establish that the use these was intentional. Mr. Healy helpfully informed the Panel that Sport Ireland was not in a position to do so. Therefore the period of ineligibility is 2 years in respect of each of these second and third prohibited substances. (*emphasis added).*

19. Finally, when considering proof of a violation comprising several prohibited substances, as here, he said that Article 10 provides that the period of ineligibility is to correspond with the most severe of those being imposed. Having regard to the above sanctions, Mr. Healy submits that the appropriate and prescribed period is four years for all three violations combined, which Sport Ireland seeks.

20. Before reaching its Decision, an opportunity was given to any member of the Panel or other parties in attendance to raise any issue or to ask any question arising out of the submissions made.

21. Mr. Deutrom, referred to the statement made by the Athlete her emails that she completed a WADA on-line course when she got the result of the test, stating that she was "*now educated on anti-doping and I am delighted that this is a requirement",* and to one made in a more recent email that: "I jumped into the competition a couple of days beforehand. I'm not a wrestler - I only did a few classes for fun..." In that context Mr. Deutrom asked if Mr. Kennedy could give the Panel a sense of what appeared to be the relative inexperience of the athlete, as well as the degree of anti-doping education she might have received before "jumping into competition", and not being a full-time athlete or wrestler.

22. In response, Mr Kennedy very helpfully informed the Panel that, although he did not know much about her prior experience, the Athlete had switched to

wrestling, from, he believed, a weight-lifting sport. He explained that the level of competition for female wrestlers in Ireland was quite small and she was quite a competitive person. She did enter another smaller local wrestling competition about a month previously (there was no anti-doping testing at that), but that set her up for the "[...] ", in which she "gained a medal".

23. Mr Kennedy also explained that prior to this alleged anti-doping rule violation, Irish Wrestling did not have a compulsory scheme of anti-doping in existence, but that since this event, it had become compulsory for all wrestlers competing in events under their auspices, to undertake an anti-doping e-learning programme.

24. He confirmed that at all times competitors (in IAWA events) must confirm that they are aware of the anti-doping guidelines and have read them, and are "signed-up" to the Irish Anti-Doping guidelines. There is a box on the entry from which they must tick prior to signing, to confirm the above. Also, his Association has an anti-doping stand at wrestling events, and they distribute wallets and have programmes during and outside of competition, where coaches and athletes can take part in an anti-doping programme. He was not aware whether the Athlete had done so.

25. In response to a query from the Chair, Mr Kennedy also said that many of the competitors might not be alert to the anti-doping rules. He also confirmed that the Athlete did tick the box to say she was aware that the anti-doping regulations would apply to the ([...]) competition in which she was tested, (in response to a final query from Mr. Deutrom).

26. Dr. Cullivan-Elliott asked for clarification from Mr. Healy on the waiver by the Athlete of her right to have the B sample tested. He drew attention to the provisions of Article 7 of the rules, including Article 7.6.1.5 relating to the point. The Athlete was notified in the letter of the 3rd December 2019 of her right to do so, and did not in fact, exercise that right, thereby waiving it. Dr. Cullivan expressed herself satisfied with the clarification that the Athlete had passively waived the right, by not seeking to have the B sample tested.

There were no other questions raised by any other person present.

E THE DECISION OF THE PANEL

(a) LIABILITY

1. The first thing to reflect on is the non-attendance of the Athlete at the Hearing. The Panel is satisfied from the evidence tendered and correspondence – letters and emails - issued on behalf of Sport Ireland, by its solicitor, and by the Registrar to the Panel, that the Athlete was strongly encouraged to attend the Hearing. She was also advised on several occasions of the desirability of seeking

legal advice in relation to the charges made, as early as in the letter of the 3rd December, 2019 and in letters and emails since. It is regrettable that the Athlete did not attend.

2. The result was that the Panel had no opportunity to assess the Athlete, or hear her explanations of the events giving rise to the charge made against her, or any mitigating matters or defences she might have wished to put before the Panel. In the circumstances, although the Panel is entitled, under Article 18.4.10 of the Rules, to draw inferences adverse to her from her absence – and the Athlete was also advised of this possibility by Sport Ireland - the Panel did not do so in the present case. The fact remained however that the Athlete could not readily be taken by the Panel to have made clear admissions of liability to the charges made against her by Sport Ireland, particularly so in light of the unclear or changing nature of the statements apparently made by her over time.

3. Leaving aside certain presumptions which can be invoked against an athlete in respect of issues arising in the course of an anti-doping investigation, dealt with later, the proof required to establish, *inter alia,* an admission is high. Article 8.4.1 of the Rules provides:

> *"Sport Ireland shall have the burden of proving anti- doping rule violations. The standard shall be whether Sport Ireland has done so 'to the comfortable satisfaction of the Hearing Panel'. The Standard of Proof on Sport Ireland in all cases is "greater than a mere balance of probabilities, but less than proof beyond reasonable doubt."*(emphasis added)
>
> For convenience, where the onus of proof lies on an athlete, that proof is "*on the balance of probabilities",* which is the normal civil level proof.

4. This lesser onus on an athlete is fair, because there are several presumptions in the Rules which tell against an athlete, but which necessarily must exist under Rules of this nature which relate to all parties affected by them. These presumptions are wide ranging and were invoked, validly, by Mr. Healy. We return to them later. The Rules also provide that facts may be proven "*by any means, including admissions*", and that the Panel is *"not bound by legal rules in connection with the same".* The Panel is fully alert to the broad discretion in its hands. Further, the only time the burden of proof is lowered under the Rules is in the case of an athlete being obliged to prove any particular defence. Otherwise the burden of proof in all other matters appears to be the higher one mentioned above as imposed on Sport Ireland.

5. In the case of an athlete not being in attendance at the Hearing, as here, and it being clear the admissions were intended to be invoked in order to establish her effective "guilt", in respect of the charge made, the Panel considered it was appropriate to raise the issue of proof of the purported admissions. The Panel acknowledges Mr. Healy's prompt decision on behalf of Sport Ireland not to rely on these, but to proceed instead to establish that the violations, on the basis of the

evidence produced and the presumptions which Sport Ireland was entitled to rely on under the Rules, had been committed by the Athlete.

6. At the other end of the spectrum, Sport Ireland did invoke the content of certain emails from the Athlete, when these appeared to represent the Athlete's stated explanations or claimed ameliorating circumstances, for her benefit. This being a matter primarily for Sport Ireland, the Panel did not object to their being relied upon in ease of the Athlete. In any event the Panel has an obligation under the Rules to raise the issue of possible amelioration or defence whether or not this is independently raised by an athlete.

7. Moving from those preliminary matters arising from the Athlete's absence, and to the issue of the Athlete's liability, as mentioned by Mr. Healy, a "prohibited substance" under the Rules means any substance, or class of substances, as so described in the Prohibited List published by WADA.

8. In passing, the Panel mentions that anti-doping rules operating throughout most of the World are first adopted as the WADA Anti-doping Rules, which include the Prohibited List, after consultation by WADA with national, international, and other relevant bodies. When the Anti-Doping Rules are finally adopted by WADA, after feedback from such consultation, they are transmitted by it to the various national or international WADA members and other affiliated bodies, and, in turn, are adopted by, among others, national bodies such as Sport Ireland. The Anti-Doping Rules of Sport Ireland are long-established and in their current version exist since 2015 (with an amendment made to them in 2019). They reflect the content of the WADA Prohibited List, and that list is incorporated or referenced into the Rules by the terms of Article 3.

9. In the course of the hearing, it was explained that each of the substances found in the urine sample given by the Athlete, and established as having been present in the A Sample, was a prohibited substance, within the definition in the Rules. A prohibited substance is one appearing on the WADA Prohibited List (which is also incorporated into the Rules of Sport Ireland). The definitions of prohibited has been set out earlier. But while the first substance is a prohibited substance, it is not a specified substance.

10. A "specified substance" is defined in Article 3.3 of the Rules in these words:

> *"all Prohibited Substances shall be Specified Substances except all those* substances *in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified in the Prohibited List*" (*emphasis added*).

11. Mr. Healy had informed the Panel that stanozolol was not a specified substance, but that both of the 2nd and 3rd substances were specified substances, within the meaning of the above definition. We will return to these in the sanctions

sections. However, the Panel notes that under Article 3 of the Rules in its footnote (no 14), the specified substances are considered to be not any less dangerous than any other doping substances.

12. Having regard to the technical proofs, to the terms of the Act of 2015, and the applicable presumptions contained in it, as well as to the several established proofs arising from the A Sample testing, it is difficult to find but that the anti-doping rule violations has been established. There is no evidence before the Panel which could question the existence of each of the three prohibited substances in the urine sample taken from the Athlete as confirmed by the laboratory in Cologne, which the Athlete has brought to the attention of the Panel, and which would or could in any way undermine the anti-doping rule violations which are the subject of the charge by Sport Ireland against the Athlete.

13. The evidence in support of the charge includes: (a) the appropriate collection of the sample without objection by the Athlete; (b) the testing of the A Sample at a WADA accredited laboratory, according to appropriate international testing standards, unchallenged by the Athlete; (c) the notification by the laboratory of the results of the test in a technical Report and an Adverse Analytical Finding (the "AAF" mentioned above), to Sport Ireland; (d) thereafter, the notification of the same by Sport Ireland to the Athlete, without a request by her to have the B sample tested, although told of her entitlement to do so.

14. Other matters relevant to the establishment of liability also include: (a) the absence by the Athlete of any mention of any of these substances in the formal doping documents completed and signed by her - as certified by a member of the Doping Control Team in attendance on the day of the competition although obliged to do so under the Rules; (b) the listing by the Athlete of seven separate products she clearly knew must be disclosed; (c) the ticking of the box on the appropriate Doping Control Form that she was aware the anti-doping Rules would apply to the event she was competing in, and as confirmed to the Panel by Mr. Daniel Kennedy of the IAWA during the course of the hearing.

15. The Panel also refers to the several presumptions under the Rules that are also of relevance. These presumptions which relate to some of the last series of matters, including those relating to the status of the formal documents, are properly applicable to them. Under the Rules there are clear provisions for the careful completion of the Doping Forms and their certification; to the guarding and protection of these; to the manner in which samples and documents must be handled prior to being transferred, and to all the foregoing being certified by the appropriate team, so as to ensure that there can be no tampering/loss of the A Sample. Copies of these completed and appropriately signed and witnessed forms were furnished to the Panel, to which it had appropriate regard. Under the provisions of Rule 1.4 of the Rules, an athlete is obliged to assist Sport Ireland, *inter alia,* with all the foregoing matters, by way of cooperation.

16. The matters mentioned in the last several paragraphs, together with the presumptions touched upon earlier in this Decision and previously in the submissions on behalf of Sport Ireland, and the particular scientific materials emanating from the WADA accredited laboratory, all adequately establish the presence of listed prohibited substances in the A sample, as properly notified to the Athlete.

17. It has been fully demonstrated, to the comfortable satisfaction of the Panel, that there were no features or events surrounding the anti-doping violations established by the testing of the Athlete's urine sample taken during an in-competition test, or surrounding the notification of those violations to the Athlete, which have been challenged or undermined by any evidence, so as to make the findings flowing from them doubtful or insecure in any way.

18. When the Athlete was notified of the alleged anti-doping rule violations, and of the technical and other evidence relating to those, she was fully and clearly informed by Sport Ireland, of their seriousness, in the letter to her of the 3rd December 2019. That letter included an express mention of the Certificate of Initial Review, and the fact that, flowing from that, she was being charged with anti-doping rule violations. The letter clearly explained her right to have her B sample tested independently. She did not seek to do so. Nor did she challenge her provisional ban though entitled to so.

19. For the several reasons set forth above, the Panel finds that Sport Ireland has established to the comfortable satisfaction of the Panel that the Athlete committed the anti-doping rule violation with which she was charged in respect of all three prohibited substances.

THE CONCLUSIONS OF THE PANEL ON LIABIITY

The Panel concludes on the issue of liability that the existence of the three prohibited substances in the urine Sample A of the Athlete and tested by the WADA accredited laboratory mentioned above, - has been adequately and fully established by Sport Ireland to the comfortable satisfaction of the Panel, on the evidence and materials presented, and the presumption provided for under the Rules, and this has been done to the standard of proof provided for under the Rule.

F. THE ARGUMENT OF THE PARTIES ON A PARTICULAR "DEFENCE"

(b) Contaminated Product Defence

Preliminary:

Prior to moving to the issue of formal sanctions under the Rules, the Panel refers to the so-called "contaminated product defence" mentioned in the Sport Ireland submissions and addressed by Mr. Healy. Although called a 'defence' – it is clear from the Rules that this can only feature in the context of sanctions in this particular Hearing.

A In the written submissions of Sport Ireland, and in Mr. Healy's argument before the Panel, the so-called defence is placed after the conclusion of the arguments on liability and before the issue of sanctions. The Panel accepts this approach fits correctly into the scheme of the Act and the Rules, as having a possible effect on any sanction, since this defence is dependent on an athlete establishing the existence of a contaminated product and the absence of fault and negligence, as well as having admitted the violation, all as a pre-condition to a reduced sanction.

B This is also in line with the terms of the Sanctions provisions in the Rules because, even when there is a significant reduction in the sanction – even down to zero - the charge does not disappear. Instead there remains at all times a "reprimand" within the sanctions provision, even if reduced to as low as zero, making it clear that the violations have been established, and the charge remains but the sanction takes into account specific matters as Mr Healy submitted.

C In the circumstances the Panel makes no findings – preliminary or otherwise – on the proper scope or extent of the so-call contaminated defence in this Decision save and in so far as it relates to whether or not such a defence has been established and as to how such a defence may affect the issue of sanctions in this particular case and on these particular facts.

Decision on the Contaminated Product Defence

1 The Panel makes its decision in this case in the context of sanctions as provided for under the Rules for the charge which has been made against the Athlete for an identified anti-doping rule violation. The Panel applies the Rules in that context.

2. Under the Anti-Doping Rules, an athlete is entitled to establish, that a product (admitted to have been taken), was taken without the Athlete being able, in effect, to have known that it contained any of the prohibited substances, that is, it was contaminated with the substance. The two key factors in this defence are: (i) the existence of a label(s) on a product, which does not disclose among the ingredients, the prohibited substance; and (ii) prior searches for information in relation to such a product on the internet, to determine if it is safe to ingest and carried out by an athlete.

3. As to (i) above, the necessary physical material – such as a tub or bottle or container in which the prohibited substance is said to have been included but whose label does not disclosed it - is within the hands of an Athlete (often exclusively . The burden of proof is on the Athlete (on the balance of probabilities) - who claims that this is what occurred - to establish it by presenting to Sport Ireland evidence relating to the labelling - presenting either the pack/container as purchased (and evidence of its purchase), or a new identical one, so as to establish that, indeed, the label did not disclose the prohibited substance. That the burden is on an athlete is confirmed in the finding of the Irish Sports Anti-Doping Disciplinary Panel in in O'R v Sport Ireland (26 February 2018 (para 126).

4. The defence cannot however succeed if an athlete is unable also to establish that he or she was not guilty of significant fault or negligence in relation to what was done. If it were otherwise, this would mean that a failure on the part of the athlete to do all that is necessary to establish the true position concerning the contaminated product, would be sufficient to avoid the appropriate penalty or have it improperly reduced in the case of an anti-doping violation. This would undermine the anti-doping system and its Rules, including Sport Ireland's role in eliminating cheating in the field of competitive sport.

5. So apart from checking the physical label and the product being produced to prove what is claimed, the Athlete must also show that she carried out a real, genuine, and adequate searches of the Internet to satisfy herself that the product did not - quite apart from the contents of the label – contain the prohibited substance according to the internet. There is an obligation on all athletes under the provisions of Article 1.4 of the Rules to carry out all appropriate research on products before ingesting them, as well as to be knowledgeable of such products.

6. First it should be recalled that in the case of the requirement at (i) above, the Athlete did not make any clear admissions of liability which were put before the Panel by her or on her behalf. It is not possible to determine what the Athlete might have said had she attended the Hearing – it not being proper to speculate - in relation to the product suggested as having purchased, or whether she might or might not have presented any physical materials relating to the matter. As to (ii) above relating to possible internet searches carried, the Panel cannot either speculate as to what she might have said in respect of that requirement

7. Instead, starting with the label, and bearing in mind the advices given to her by Sport Ireland, the Athlete produced no material, of the type she was advised would be needed. (see the letter of the 3rd December 2019 to her). There was nothing before the Panel which established (a) that any such product was purchased by or for her; (b) that any such product was ingested; (c) that any such product did or did not contain a label, or if it did, what that label contained; (d) that prohibited substances were shown on the label - or if not - were hidden in other ingredients; and finally there was (e) no other material of the type Sport Ireland mentioned as being essential, in particular the production of a new unopened container.

8. The reasonable requirements listed by Sport Ireland under (i) in the last paragraphs were therefore never met by the Athlete, and the Panel so finds. In consequence there is absolutely no physical evidence at all which could support, as a basic requirement, the contention that such a contaminated product existed. There was and could be no reason why this first part of the defence, could even fall within the ambit of the Panel's consideration under sanctions, and the Panel so finds.

9. The Athlete by failing also to attend when requested, at the Hearing, in effect deprived the Panel of considering evidence she might have presented but did not. In the circumstances, the Panel concludes that the Athlete has failed on the

balance of probabilities, to establish the first essential element in the contaminated product defence, and the Panel so finds.

10. For completeness, we mention, in passing, the additional requirement under (ii) above and which the Athlete would also be obliged to establish - again on the balance of probabilities. This second essential element requires the Athlete to established there has been "no Significant Fault or Negligence" on her part. That includes an athlete proving that he/she had made internet enquiries in advance of taking a product that might contain a prohibited substance, so to be satisfied that the product he/she proposed to take did not contain a prohibited substance

11. This second heading is in reality no longer relevant before this Panel, in so far as all the three substances are concerned, in light of the Panel's finding on the first set of requirements not being met. Mr.Healy had submitted that, according to some emails from the Athlete, there appeared to have been no internet searches carried out by her whatsoever. Since the entitlement of Sport Ireland to rely on any matters arising from exchanges (which were not admitted in evidence with the meaning of Article 8 of the Rules), the permitted submission in that regard was on the basis of exchanges that might have been of assistance to the Athlete in the reduction of any sanctions, or as an ameliorating factor only. The Panel does not therefore take this evidence into account.

12. Of course the consequence of the Athlete's absence is that the Panel is left with the following factual position, on this (ii) aspect of the requirements also , namely: (a) there is no evidence whatsoever as to what steps the Athlete took to inform herself of available information; (b) there is no evidence she took any steps to do so by means of any internet search; and (c) if she took steps to inform herself of available information by means of an internet search, there is equally no evidence at all as to what that internet search resulted in; and finally, (d) there is no evidence whatsoever that the requirements to do so in order to establish the second element in the defence, as set out in the letter from Sport Ireland of the 3rd December 2019, were met to any extent at all or at any level.

13. Subject to what was said above by Mr. Kennedy concerning anti-doping education there was also no evidence to suggest that the Athlete, an adult (turning 32 in the same month as the testing took place), who was involved in the sport of wrestling at the time, and previously involved in another sport did not understand the nature of the obligation both to avoid ingesting prohibited substances, and to disclose at competitions, all products which had been ingested in the specified period. On the contrary she ticked the box indicating her knowledge of the fact that the Event was subject to anti-doping rules of Sport Ireland, and disclosed medicinal and non-medicinal substances on the Form she completed.

14. In light of the foregoing, since it is clear that the only manner in which this aspect of the burden of proof on the Athlete can be discharged, and the Athlete has failed utterly to do so, including by failing to bring any material to the attention of

the Panel, or attend the Hearing allowing her to do so, the Panel also finds that the Athlete has not established that there was no significant fault or negligence on her part, as required under the Rules.

15. Since establishing the above are the means by an Athlete also shows that he/she has not been at significant fault or negligent it is clear that the Athlete in the present case has not established either so as to be able to rely on such a defence.

Since this part of its Decision is for completeness only the Panel makes no formal findings in respect of the Athlete in the matter of a contaminated product defence.

G. THE ARGUMENT OF SPORT IRELAND ON ISSUE OF SANCTIONS SIMPLICITER

1. Having regard to the foregoing conclusion on the issue of liability, and the Panel's findings on the contaminated product defence the Panel now considers the Sport Ireland submissions, and any other evidence or matters which ought to be considered under the sanctions provisions of the Rules.

2 First, Mr. Healy drew attention to the various provisions of Article 10 of the Anti-Doping Rules and to the "period of ineligibility" – in essence a ban – that is to be imposed in the event of a finding against an athlete for an anti-doping rule violation. Here the Athlete has been found to have committed the three anti-doping rule violations as listed above with which she was charged.

3. In the case of a prohibited substance which is not a "Specified Substance", he said the period "shall be four years", unless an Athlete can establish that the violation "was not intentional". The first of the prohibited substances found to exist in the A Sample, namely, stanolozol (an anabolic agent), is not, under the Rules, such a specified substance. Where an athlete "admits the violation and can establish that the violation was not intentional" the period of ineligibility "shall be two years.

4. Turning the to second and third substances established as existing in the A Sample tested, namely the methylhexaneamine, and 1,4dimethylpentyl amine (both stimulants), both specified substances, Sport Ireland draws attention to the provisions of Article 10.1.1 which provides that the period of ineligibility is two years, unless Sport Ireland can establish that the anti-doping violation was intentional. Sport Ireland conceded in its submissions that it is unable to establish that these two rule violations were intentional.

5. Mr Healy then drew attention to Article 10.6.4.1 in light of which it contended that it expressly provides for all three rule violations being considered together and carry the more severe sanction, in which case the appropriate sanction is four years.

6. Finally, Sport Ireland pointed to the terms of Article 10.7.3.1 of the Rules which provides that an athlete "shall receive credit for any period of provisional suspension imposed", and those of Article 10.7.2., where the period of ineligibility, for an athlete who has made a "timely admission" of the violations, may be backdated to a date "as early as the date of sample collection". Mr Healy noted that the position was different now that the Athlete had not appeared or made reliable admissions at this point.

7. In the case of the Athlete, Sport Ireland accepts that upon the application of this Rule, the ineligibility should commence from the 4th December 2019 and referred to ancillary matters as to medals title and so forth.

H DECISION OF THE PANEL ON THE ISSUE OF SANCTIONS

SANCTIONS

9. This part of the Decision of the Panel is shorter, as the Rules provide for two circumstances only in which consideration must be paid to the period of any ban, in the case of an athlete - these are for the purpose of possibly reducing any period of ineligibility provided under the Anti-Doping Rules, and, in the case of Sport Ireland, for the purposes of increasing the period of ineligibility otherwise provided for in the Rules.

10. At the outset, it is important to say that, generally speaking, the "normal" or "default" sanctions provided for under the Rules should apply. In the present case, as concerns the first rule violation the sanction is four years, and for the second and third violations, two years each. However, where several rule violations have been established, as here, the higher of the available sanctions for any one of the violations apply, namely, four years.

11. In the case of the Athlete, it will be recalled from the matters under the earlier findings of the Panel, she presented no evidence at all of how she came to have the substances in her body at the time of the testing and the Panel found her liable for the violations. The Panel has found also that she did not meet any of the requirements to establish a contaminated product defence. Those matters are no longer germane in the context of an appropriate sanction. The normal sanction in the case of the first rule violation a period of four years ineligibility and the Panel finds that this is the appropriate sanction in the case of the first prohibited substance.

12. The Panel is also satisfied that Sport Ireland – which did not seek to establish that the Athlete's rule violations for the second and third specified substances, were "intentional" within the ambit of the Rules, would probably not have been in a position to do so, given the heavier burden of proof on Sport Ireland imposed under the Rules. That being so, the ordinary period of ineligibility for the 2nd and 3rd violations of the Rules is two years and the Panel finds that is the

appropriate sanction in respect of each of these. However the presumptions as to her intentional use of the prohibited substance stanozolol are properly applicable and have not been proved to be otherwise.

13. Having regard to the foregoing the Panel is of the view that Sport Ireland has also established that, within the provisions of the Rules, the three rule violations must be considered together, and the more severe of the periods of ineligibility is the applicable one under Article 10, namely four years and the Panel so finds. In essence the 2 years sanction for use of each of the 2nd and 3rd prohibited substances, are subsumed within the four year sanction for the first violation.

14. The final matter drawn to our attention is the date from which the four year period of ineligibility should apply. Backdating a ban to the date of preliminary banning – namely the 4th December 2019 (presumed to be the date upon which the letter 3rd December 2019 from Sport Ireland to the Athlete would have been received by the Athlete setting out the provisional ban), appears to be fairly automatic. This also tallies with the norm in the case of charges where a sentence may be backdated to the time when a defendant was first deprive of his/her freedom, or made subject to restrictions.

15. On the other hand the backdating of the ban to an earlier date – which usually relates to either "prompt admissions" or "timely admissions" of the rule violations, to the date of sample testing, is not automatic, and must depend on the establishment, at least, of such timely admission(s). The Panel finds there are no circumstances before it that might support any application relating to the existence of any prompt admissions.

16. While the issue of timely admissions was mentioned in the formal written submissions of Sport Ireland, on the basis – it is assumed – that there would be clear direct evidence of the admissions made by the Athlete, this submission was not fully followed through in that direct manner at the Hearing. Quite properly so, since the Athlete chose not to attend the hearing, and no admissions were clearly established as having been made.

17. Timely admissions can assist greatly in the fight against doping in competitive sport as Mr Healy said on behalf of Sport Ireland. The Panel agrees. Such a timely admission can assist greatly in expediting the resolution of alleged anti-doping violations, and have the proper aim of encouraging athletes to cooperate with Sport Ireland in its proper efforts to eliminate doping in competitive sport.

18. In terms of the context in which any backdating of the period of ineligibility in the case of the three prohibited substances arises, the Athlete when notified of her rule violations was offered all the assistance possible by Sport Ireland. She was clearly advised of the matters she needed to bring to Sport Ireland or the Panel in relation to any defence she wished to establish in relation to the violations. The letter of the 3rd December 2019 was not responded to in a manner which established a clear admission of the violations on her part, (or one that appeared to have

continued unhanged). Her subsequent approaches sought to deal with the violation in a highly individual and informal manner not envisaged by the Rules. The Athlete failed to present to Sport Ireland or the Panel any evidence of compliance with any of the various steps set out for her in order to deal with any alleged defence she thought she might have.

19. Had the Athlete made clear and very early admissions, or had a solicitor done so on her behalf, it might have been possible for the Panel to have considered the provisions of the rules relating to the full or reduced impact of any of the sanctions applicable, or the commencement date in respect of the same. But that was not the position here, regrettably. Sport Ireland was instead obliged to establish to the high proof necessary, the existence of all three violations of the Rules, and also to endeavour to ensure that any matters which might be in ease of the Athlete be brought to the attention of the Panel which could only be done within the constraints arising due to the Athlete's absence from the Hearing.

20. The Panel is satisfied that it protected the Athlete's interest during the entire of the Hearing in her absence.

21. The Panel concludes that there are no grounds for backdating the commencement of the sanction period beyond the date of the provisional ban – the 4th December 2019.

FINDINGS OF THE PANEL ON LIABILITY ON SANCTIONS

AND IMPOSITION OF PERIODS OF INELIGIBILITY AND RELATED MATTERS

FINDINGS

A The Panel find to its comfortable satisfaction that Ms [IS-7129] committed an anti-doping violation in in-competition testing on the [...] 2019 in respect of the following prohibited substances namely:

(i) epi-stanozolol glucuronide (stanozolol) (S. 1.1. Anabolic Agent);

(ii) 4-methylhexan-2-amine (methlyhexaneamine) (S. 6 Stimulants);

(iii) 5-methylhexan-2-amine (1,4dimethylpentylamine (S. 6 Stimulants).

B The Panel has concluded to its comfortable satisfaction that Ms. [IS-7129] has not discharged the burden of proving that none of her three anti-doping rule violations was not intentional. In such circumstances, the period of ineligibility which must be imposed on her under Article 10.1.1., and pursuant to Article 10.6.4.1, in the case of all three violations being considered together is the most severe sanction of the three, namely four years and so orders.

C **The Panel is unable to find to its comfortable satisfaction that there are any circumstances in which it could be said that the Athlete made clear admissions, such as to permit the Panel to recognise or classify them as "timely admissions" within the Rules. In the circumstances the Panel finds that there are no grounds upon which any of the sanction imposed should be backdated to the date of taking of the A Sample**

D **The Panel concludes that the said period of ineligibility shall commence from the date of imposition of the provisional ban imposed on the Athlete, namely, the 4th December, 2019, and so orders.**

ANCILLARY MATTERS

E **The Panel concludes that Ms. [IS-7129] must deliver up to the Irish Amateur Wrestling Association (IAWA) or its nominee, the medal and any physical awards she gained in the [...] 2019 Wrestling Event, held on the [...], the said medal(s) to be delivered up to the IAWA within 10 (ten) working days of notification of this Ruling to Ms. [IS-7129] and so orders.**

F. **Since the anti-doping rule violation occurred in connection with an in-competition test the individual result obtain by Ms. [IS-7129] in the Competition on the [...] [...] 2019 is forfeited including medals, titles points or prizes obtained by virtue of the purported result on that date. In so far as the regularisation of the medals, title points or similar are concerned, these matters should be arranged and agreed between Sport Ireland and the Irish Amateur Wrestling Association**

Dated the 14th day of May, 2020

Fidelma Macken

Signed on behalf of the Panel by

Mrs. Justice Fidelma Macken