

## DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MS KUFTU TAHIR DADISO

### INTRODUCTION

1. World Athletics has established the Athletics Integrity Unit ("**AIU**") whose role is to protect the integrity of the sport of Athletics, including fulfilling World Athletics' obligations as a Signatory to the World Anti-Doping Code ("the "**Code**"). World Athletics has delegated implementation of the World Athletics Anti-Doping Rules ("**ADR**") to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. Ms Kufu Tahir Dadiso ("the **Athlete**") is a 26-year-old Ethiopian road runner<sup>1</sup> who is an International-Level Athlete for the purposes of the ADR<sup>2</sup>.
3. This decision is issued by the AIU pursuant to Rule 8.5.6 ADR, which provides as follows:

*"8.5.6 In the event that the Athlete or other Person either (i) admits the violation and accepts the proposed Consequences or (ii) is deemed to have admitted the violation and accepted the Consequences as per Rule 8.5.2(f), the Integrity Unit will promptly:*

- (a) issue a decision confirming the commission of the violation(s) and the imposition of the specified Consequences (including, if applicable, a justification for why the maximum potential sanction was not imposed);*
- (b) Publicly Report that decision in accordance with Rule 14;*
- (c) send a copy of the decision to the Athlete or other Person and to any other party that has a right, further to Rule 13, to appeal the decision (and any such party may, within 15 days of receipt, request a copy of the full case file pertaining to the decision)."*

### THE ATHLETE'S COMMISSION OF ANTI-DOPING RULE VIOLATIONS

4. Rule 2 ADR sets out that the following shall constitute an Anti-Doping Rule Violation:

*"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*

*[...]*

*2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method"*

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<sup>1</sup> <https://www.worldathletics.org/athletes/ethiopia/kufu-tahir-14748876>

<sup>2</sup> The Athlete's Anti-Doping Rule Violations arise from Testing conducted under the Testing Authority of World Athletics/the AIU in accordance with Rule 1.4.4(c) ADR

5. On 11 April 2021, the Athlete provided a urine Sample, In-Competition, at the ‘Xiamen Marathon & Tuscany Camp Global Elite Race’ in Siena, Italy (“the **Competition**”), which was given code 0018279 (the “**Sample**”).
6. On 18 May 2021, the World Anti-Doping Agency (“**WADA**”) accredited laboratory in Lausanne, Switzerland (the “**Laboratory**”) reported an Adverse Analytical Finding in the Sample for the presence of Morphine at an approximate concentration of 12.5 µg/mL (the “**Adverse Analytical Finding**”).
7. Morphine<sup>3</sup> is a Prohibited Substance under the WADA 2021 Prohibited List under the category S7: Narcotics. It is a Specified Substance prohibited In-Competition.
8. The AIU reviewed the Adverse Analytical Finding in accordance with Article 5 of the International Standard for Results Management (“**ISRM**”) and determined that:
  - 8.1. the Athlete did not have a Therapeutic Use Exemption (“**TUE**”) that had been granted (or that would be granted) for the Morphine found in the Sample; and
  - 8.2. there was no apparent departure from the International Standard for Testing and Investigations (“**ISTI**”) or from the International Standard for Laboratories (“**ISL**”) that could reasonably have caused the Adverse Analytical Finding.
9. Therefore, on 20 May 2021, the AIU notified the Athlete of the Adverse Analytical Finding in accordance with Article 5.1.2.1 of the ISRM, including that the Adverse Analytical Finding may result in Anti-Doping Rule Violations pursuant to Rule 2.1 ADR and/or Rule 2.2 ADR.
10. On 28 May 2021 and 14 June 2021, the Athlete submitted her explanation to the AIU which provided, in summary, that the night before the race, she took what she thought to be paracetamol as she was experiencing severe menstrual cramps. She believed that, rather than taking paracetamol, she ingested a tablet of “Sandoz Morphine” that had been prescribed to her husband and that he had left in the luggage that she used to travel to Italy for the Competition.
11. The Athlete admitted the Anti-Doping Rule Violations (i.e., the Presence and Use of a Prohibited Substance, In-Competition, viz. Morphine pursuant to Rule 2.1 ADR and Rule 2.2 ADR). However, she claimed that these Anti-Doping Rule Violations were the result of her accidental (as opposed to deliberate) ingestion of Morphine.

## CONSEQUENCES

12. This is the Athlete’s first Anti-Doping Rule Violation.
13. Rule 10.2.1 ADR provides that the period of ineligibility to be imposed for the Presence/Use of a Prohibited Substance shall be determined as follows:

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<sup>3</sup> Morphine is a Threshold Substance. Therefore, in accordance with the WADA Technical Document TD2021DL, WADA-accredited laboratories will only report a finding of Morphine in a sample as an Adverse Analytical Finding if the concentration in the sample is greater than the Decision Limit of 1.3 µg /mL.

**“10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method [...]**

**10.2.1 Save where Rule 10.2.4 applies, the period of Ineligibility shall be four years where:**

- (a) *The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*
- (b) *The anti-doping rule violation involves a Specified Substance or a Specified Method and the Integrity Unit can establish that the anti-doping rule violation was intentional*

**10.2.2 If Rule 10.2.1 does not apply, then (subject to Rule 10.2.4(a)) the period of Ineligibility will be two years.”**

14. Morphine is classified as a ‘Specified Substance’. Rule 10.2.1 ADR specifies that an Anti-Doping Rule Violation for a ‘Specified Substance’ carries a 4-year period of Ineligibility if the AIU is able to establish that the violations were “intentional”.
15. Rule 10.2.3 ADR explains that, in that context, the term “intentional” is meant to identify those who engage in conduct that they knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk.
16. Given the facts set out above and the AIU’s further investigation into those facts, the AIU has not discovered any evidence that the Athlete’s Anti-Doping Rule Violations were ‘intentional’ within the meaning of Rule 10.2.3 ADR.
17. The mandatory period of ineligibility to be imposed in the Athlete’s case is therefore two (2) years, subject to a potential reduction pursuant to Rule 10.5 ADR (No Fault or Negligence) or Rule 10.6 ADR (No Significant Fault or Negligence) based upon the Athlete’s level of Fault<sup>4</sup>.
18. Rule 10.5 ADR (No Fault or Negligence) is manifestly inapplicable in the Athlete’s circumstances. There are no exceptional circumstances that exist in this case and the Athlete

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<sup>4</sup> *“Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete’s or other Person’s degree of Fault include, for example, the Athlete’s or other Person’s experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete’s or other Person’s degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete’s or other Person’s departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Rule 10.6.1 or 10.6.2.”*

failed to exercise utmost caution, both of which are conditions to the application of Rule 10.5 ADR<sup>5</sup>.

19. However, the AIU accepts that Rule 10.6 ADR (No Significant Fault or Negligence) is applicable to the Athlete's case:

***“10.6.1 Reduction of the period of Ineligibility based on No Significant Fault or Negligence***

*10.6.1 Reduction of sanctions in particular circumstances for violations of Rule 2.1, 2.2 or 2.6*

*All reductions under Rule 10.6.1 are mutually exclusive and not cumulative*

*(a) Specified Substances or Specified Methods*

*Where the anti-doping rule violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Athlete or other Person can establish that they bear No Significant Fault or Negligence for the anti-doping rule violation(s) alleged against them, then the period of Ineligibility will be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.”*

20. According to the definition<sup>6</sup>, it is a condition precedent to the application of No Significant Fault or Negligence that the Athlete must establish (on the balance of probabilities) how the relevant Prohibited Substance(s) (in this case, Morphine) entered her system<sup>7</sup>.

21. As described above, the Athlete's explanation (corroborated by documentary evidence) is that Morphine entered her system through the accidental ingestion of “Sandoz Morphine” medication (prescribed to her husband) the night before the Competition which took place on 11 April 2021. The AIU accepts that the Athlete's explanation and supporting evidence is sufficient to establish how Morphine entered her system.

## MITIGATION OF SANCTION

22. To sustain a plea of No Significant Fault or Negligence, (Rule 10.6 ADR), the Athlete must demonstrate that her departure from the strict duty of care/standard of behaviour was not significant (objective analysis) and/or that there are legitimate reasons why she failed to take

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<sup>5</sup> See the comment to Rule 10.5 ADR and the definition of No Fault or Negligence.

<sup>6</sup> *“No Significant Fault or Negligence: The Athlete or other Person's establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Rule 2.1, the Athlete must also establish how the Prohibited Substance entered their system.”*

<sup>7</sup> The Athlete is not a Protected Person or Recreational Athlete as defined in the ADR.

all the steps required to avoid the ingestion of a Prohibited Substance (subjective analysis) such that her overall level of fault should not be regarded as significant.

23. A finding of No Significant Fault or Negligence triggers a discretion under Rule 10.6.1(a) to impose a sanction ranging between a reprimand and a period of Ineligibility of two (2) years, depending on the Athlete's degree of Fault. The AIU has adopted the approach taken by the Court of Arbitration for Sport ("CAS")<sup>8</sup> to determine the applicable level of Fault in this case. In particular, the AIU has undertaken a detailed assessment of the objective level of Fault and the Athlete's subjective level of Fault in the circumstances to reach a determination as to the appropriate Consequences in this case.
24. Noting that Morphine is prohibited In-Competition, per the reasoning in *Cilic*, the objective assessment of the Athlete's Fault must include whether she was sufficiently diligent in exercising the full scale of the duty of care incumbent upon her to prevent the ingestion of Morphine.
25. Since the Athlete ingested Morphine by mistake (instead of paracetamol), she cannot have checked the medication sufficiently before ingesting it. The AIU notes that the blister packaging of the medication displays in bold English text "Morphine Sandoz 30mg" and has further (albeit smaller) text confirming that the medication is morphine sulfate.
26. Therefore, in circumstances where the Athlete believed she was only using paracetamol, an authorised painkiller, but failed to undertake a sufficient visual check of the medication that she used (either herself or through a sufficiently qualified third party) to confirm that it was paracetamol, the AIU considers that her degree of Fault falls in the "normal" range<sup>9</sup>.
27. In relation to the subjective elements of Fault, the AIU considers the following factors to be in the Athlete's favour:
  - 27.1. the Athlete is still relatively young for an elite long-distance athlete;
  - 27.2. the Athlete lacks experience in terms of anti-doping education; and
  - 27.3. the AIU is prepared to accept that the Athlete is not a native English speaker and does not read English which would have affected her ability to check the labelling/packaging of the medication.
28. Furthermore, the AIU notes that the Athlete's mistake occurred whilst she was in pain during the night and that she took the medication only to ease her discomfort. The AIU considers that the Athlete's state of discomfort, whilst of no impact on her objective level of Fault in this case, does constitute an element (albeit one that is not significant) that may be considered in the subjective assessment of her level of Fault.

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<sup>8</sup> See the cases concerning Tennis players Marin Cilic (CAS 2013/A/3327 & CAS 2013/A/3335) and Sara Errani (CAS 2017/A/5301).

<sup>9</sup> In a case of "normal" degree of Fault, the applicable sanction lays between 12 and 24 months depending on the application of any subjective criteria.

29. In considering the specific facts of this case, in particular, that the Athlete mistakenly ingested Morphine believing that it was paracetamol during the night whilst she was in pain, the AIU has determined that the Athlete's subjective level of Fault places the Athlete in the middle of the "normal" degree of Fault range and that the period of ineligibility should therefore be a period of 18 months.
30. The Athlete has accepted a period of Ineligibility of 18 months by signing an Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form on 8 November 2021.
31. Pursuant to Rule 10.13.1 ADR, the AIU has exercised its discretion to commence the period of Ineligibility from the date of first notification of the Adverse Analytical Finding to the Athlete, i.e., from 20 May 2021.

## DECISION

32. On the basis that the Athlete has admitted the Anti-Doping Rule Violations under Rule 2.1 and Rule 2.2 ADR, the AIU confirms by this decision the following Consequences for a first Anti-Doping Rule Violation:
  - 32.1. a period of Ineligibility of eighteen (18) months commencing on 20 May 2021 pursuant to Rule 10.13.1 ADR until 19 November 2022; and
  - 32.2. disqualification of the Athlete's results on and since 11 April 2021, with all resulting Consequences, including the forfeiture of any titles, awards, medals, points prizes and appearance money.
33. The Athlete has accepted the above Consequences for her Anti-Doping Rule Violations and has expressly waived her right to have those Consequences determined by the Disciplinary Tribunal at a hearing.

## PUBLICATION

34. In accordance with Rule 8.5.6(b) ADR, the AIU shall publicly report this decision on the AIU's website.

## RIGHTS OF APPEAL

35. This decision constitutes the final decision of the AIU pursuant to Rule 8.5.6 ADR.
36. Further to Rule 13.2.3 ADR, WADA and the Ethiopian National Anti-Doping Organization have a right of appeal against this decision to the Court of Arbitration for Sport in Lausanne, Switzerland, in accordance with the procedure set out at Rule 13.6.1 ADR.
37. If an appeal is filed against this decision by WADA or the Ethiopian National Anti-Doping Organization, the Athlete will be entitled to exercise her right of cross-appeal in accordance with Rule 13.2.4 ADR.

Monaco, 10 November 2021