

**THE ATP TOUR ANTI-DOPING TRIBUNAL  
APPEAL OF DIMITRY VLASOV**

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**OPINION**

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An ATP Tour Anti-Doping Tribunal {"Tribunal"} consisting of Prof. Richard H. McLaren, Esq., Chair, Dr. Arturo Marti, technical scientific member and Dr. Gary Wadler MD, medical member was formed by Richard Ings the **ATP Administrator of Rules** following a **Review Board** {"RB"} determination that Dimitry Vlasov {"Player"} had a case to answer under the Tennis Anti-Doping Program 2004 {"Anti-Doping Rules"}. Those rules are contained within the ATP 2004 Official Rulebook {"Rules"} found at p. 87 through 122. The Anti-Doping Rules are designed to maintain the integrity of men's professional tennis and protect the health and rights of all tennis players. The Program includes (i) doping tests in and out of competition, (ii) the imposition of penalties for Doping Offenses, and (iii) support and assistance to players when applicable.

The Player was heard via telephone conference call at a hearing held on 16 March 2005. Ms. Lanskaya, Esq. represented the Player, who was also present at the hearing. Ms. Tanya Slobodkin of Toronto, Canada was retained by the Tribunal to provide Russian interpretation assistance for the Player and Counsel.

John McLennan, Esq. represented the ATP Tour {hereafter the "Tour" or the "ATP"}. Mr. Richard Ings, ATP Executive Vice-President Rules and Competition was also present.

**BACKGROUND FACTS**

1. The Player is a professional tennis player from Russia. He has been a member of the ATP since 2 May 2001.
2. The ATP Tour is a not-for-profit membership organization composed of male professional tennis players and tournament organizations. The ATP sanctions tennis tournaments and provides league governance and support to its member tournaments and players. Pursuant to this roll the ATP has adopted rules for the conduct of tournaments and players. The ATP Tour 2004 Official Rulebook is applicable to this case.

3. On 17 May 2004, the Player signed the standard consent form required by Rule B. 1. for the 2004 season {ATP Exhibit Book #2}. By that form he acknowledged that he had received a copy of the Rules. He further acknowledged that he had an opportunity to review the Rules and agreed to be bound by all the provisions therein and to play by the Rules.
4. The Player provided a urine sample pursuant to the Anti-Doping Rules during the ATP sanctioned tournament the “Kremlin Cup” at Moscow, Russia on 9 October 2004 {ATP Exhibit Book #3 & #5}.
5. The urine sample provided was analyzed by the Laboratoire de Contrôle du Dopage INRS Institut Armand-Frappier {“the Lab”}, located in Pointe Claire, Quebec, Canada a World Anti-Doping Agency {“WADA”} accredited laboratory. The Lab reported to Mr. Sahlstrom of the International Doping Tests & Management {“IDTM”} who is the **Anti-Doping Program Administrator** {“APA”} under the Anti-Doping Rules. The Lab analytical result {See ATP Exhibit Book #4} together with the Anti-Doping Program Administrator Report {see ATP Exhibit Book #5} states that the A sample of the Player indicated the presence of Pemoline which is a stimulant listed in Appendix 3 (*The 2004 Prohibited List*) at S. 1 of the Anti-Doping Rules. The Player waived his right to request that the B sample be analyzed to confirm the existence of the **Prohibited Substance**. By Rule J. 2. e. the Player is deemed to have accepted the Lab analytical findings in regard to the A sample.
6. Following the notification of the **Adverse Analytical Finding**, Mr. Sahlstrom representing the APA selected three RB members under Rule J. 2. a. The RB advised the APA that there was a case to answer. The APA in turn advised the **ATP Administrator of Rules** who following the Player’s waiver of any B sample analysis appointed this Tribunal by correspondence dated 26 January 2005 {See ATP Exhibit Book #11}. The Player by signing Procedural Order No. 1 on 14 February 2005 confirmed the appointment of the Tribunal and agreed that he had no objection to the composition or the jurisdiction of this Tribunal. The ATP likewise confirmed the appointment and composition of the Tribunal.
7. On 14 September 2004 the Player attended the outpatient Department of the Moscow Scientific and Development Research Institute of Psychiatry of the

RF Ministry of Health. {See medical certificate signed by Dr. D. I. Malin of the Institute}. He testified that he had back pain that had been bothering him for some time in addition to having not slept for 3 days prior to attending the outpatient department. He complained of problems with sleep, appetite reduction, irritation and loss of performance capacity. {See translation of statement of Dr Malin provided by the Player's counsel.} He was diagnosed with a depressive syndrome as indicated on the medical certificate filed with the Player's documents. He also had been given anti-inflammatory injections for back pain. The attending physician attributed the player's depression to breach of relations with his sponsor, which was then irritated by worsening relationships with a female companion.

8. The Doctor for the Player who diagnosed the breakdown provided for various recuperative activities and a medical prescription to the Player following his complaints. He was given *Dynamin* to take 3 times a day for 3 weeks.
9. The leaflet for *Dynamin* that accompanies the pills was filed as part of the documents from the Player. The leaflet is in Spanish and listed its ingredients including *Pemolina de Magnesio 10 mg*. There is also a warning in Spanish on the leaflet. A liberal translation of the warning is: Notice to Sportsmen that this medicine may contain components that may contain compounds which would cause a positive drug test for athletes.
10. Sergey Nikolaevich Portugalov, PhD, and a Professor since 1981 and now the Deputy Director of the All Russian Scientific and Development Centre for Physical Culture and Sport in his statement indicates that *Dynamin* contains 10 mg. of Pemolin combined with other compounds. He indicated it was an over-the-counter medicine used for treating asthenic syndrome and other related disorders. He offered the unchallenged opinion that *the therapist on the basis of the established diagnosis made a justified prescription of the above-mentioned medicine as a part of the correction complex for detected disorders.*
11. The statement of Professor Portugalov states that the Lab report indicates that Pemolin was found in trace quantities. His statement suggests the analytical result is consistent with the medical treatment prescribed by Dr. Malin. It is also submitted that such a treatment would have nothing in common with the obtaining of a doping effect while preparing for a

competition. Therefore, his professional opinion, which was not challenged by the ATP counsel, is that *this case can not be identified as deliberate use of the pemolin stimulator as doping.*

12. Rodionova Inna Igorevna, a Doctor of Medical Science working as a doctor to the Russian national teams in the Russian National Teams Public Institute Center for Athletic Instruction of the Federal Agency for Physical Culture and Sport provided a statement. In that statement he describes the merits of the personal nature of the Player. He also provided information into the breach of relations of the Player's sponsor referred to in paragraph 7. Dr. Igorevna was in Athens at the summer Olympic Games when the Player contacted him about various medial maladies and he referred the Player to the Moscow Scientific and Development Center of Psychiatrics for advice, examination and treatment.
13. The Player in his statement to the Tribunal suggests that the attending physician at the Clinic Institute was not a specially trained sports doctor. He states he was given urgent medical care and in so doing the attending physician offered the Player a drug that in fact contains Pemolin. Therefore, the adverse analytical finding in his urine analysis was the result of the actions of the attending physician. The Player also states that he had never experienced this sort of situation before. Therefore, when the ATP advised him about the adverse analytical finding, he decided that he would not have the B sample analyzed.
14. By a letter dated 3 January 2005 {see ATP Exhibit Book #8} Richard Ings, Executive Vice-President of Rules and Competition notified the Player on behalf of the ATP that he had committed a Doping Offense. He was advised that the sanction for such an Offense was a two year period of ineligibility. He was also advised of his right to appeal, which the Player exercised and resulted in the formation of the Tribunal and the hearing of the Player's case.
15. The hearing was held pursuant to the Tribunal Procedural Order No. 1 by conference telephone call commencing at 7 a.m. Eastern Standard Time with all members of the Tribunal in attendance together with the counsel for the parties, an interpreter, the Player and Mr. Ings. The hearing concluded at approximately 9:30a.m.
16. Pursuant to the Procedural Order, counsel for the Player filed witness

statements from Dr. Malin, Dr. Igorevna and Professor Protugalov. Arising out of a pre-hearing conference call held by the Chairman on 14 March 2005 the ATP indicated its intention not to cross-examine the professional or the character witnesses. The Player provided written statements from himself, and Marat Safin. The ATP accepted without cross-examination all statements other than that of the Player. The Player gave evidence on his own behalf and was cross-examined by the ATP counsel and questioned by the Tribunal.

17. Player testifies that he had not slept for 3 to 4 days prior to seeing Dr. Malin. He had been depressed for several months preceding his unscheduled examination by Dr. Malin that he describes as being an urgent and emergency treatment for his insomnia, back pain and depression. He candidly states that he did not tell the doctor he was a professional tennis player nor that he was subject to an anti-doping control regimen as a professional athlete.
18. When questioned on the urgency of the treatment, he advised that the culmination of his maladies combined with lack of sleep for several days had brought him to see Dr. Malin. He testifies that he relied upon the doctor and his treatment and did not make any inquiries about the medicines he was to take. He never made any examination of the leaflet accompanying the pills because it was in Spanish and was therefore, in a language that he did not speak or understand. He made no subsequent attempt to check the ATP prohibited list or consult a sports doctor for the 21 days that he was taking the pills. However, on learning of his positive analytical result in December he had no difficulty in learning through visiting the ATP web site that the prohibited list included pemolin and that was the stimulant in the pills he had been taking.

### **SUBMISSIONS of the PARTIES**

#### **The Petitioning Player**

19. It is submitted that *Dyamin* is an over the counter medicine which ought to be considered as similar to a specified substance referred to in Rule M. 3. Therefore, the Tribunal ought to assess any consequences in accordance with

Rule M. 3. which at a minimum would be a warning and reprimand in these very unfortunate and innocent circumstances.

20. If the specified substance rule is not to be applied, then Rule M. 5. should be applied to find that Exceptional Circumstances are applicable to this case. The Player has established how the prohibited substance came to be present in his body. It was all an unfortunate but innocent misunderstanding. It was also established that the medicine used had no performance enhancing effect in sport because the quantities ingested were low and the only competition competed in was the one at which the sample was taken.
21. The circumstances fit the definition of no fault or negligence because the Player did not know or suspect and could not reasonably have known or suspected that the medicine given for therapeutic medical treatment contained a prohibited substance. In the event the Tribunal finds fault it ought to be considered no significant fault or negligence, and thus the Tribunal ought to impose the minimum sanction as set out in Rule M. 5.

#### The Respondent ATP

22. The Tour's position was that the Player had committed a Doping Offense by having a Prohibited Substance in his body during competition in violation of the ATP Anti-Doping Rules. This being a First Offense, Rule M. 2. requires that a period of two years' ineligibility be applied commencing on 8 December 2004.
23. It is submitted that Pemolin is not a specified substance found in Appendix Three being the *2004 Prohibited List*. Therefore, there can be no application of M. 3 that provides for lesser sanctions for specified substances.
24. The Player has not satisfied the requirements of the Exceptional Circumstances in the Rules in that he has contributed to his difficulties in a significant fashion. It is submitted that the Player has proven the source of the Prohibited Substance in his specimen. However, he failed to establish that his conduct was without fault or significant fault in all of the circumstances. For these reasons the Tour submit that the Tribunal should find the Player guilty of a Doping Offense and assess the penalties mandated by the Program.

25. In its submissions to the Tribunal the counsel for the ATP made reference to *Tori Edwards v. IAAF and USATF CAS OG 04/003*.

26. **THE RELEVANT ANTI-DOPING RULES**

**A. Introduction**

1. *The purpose of the Tennis Anti-Doping Program (“the **Program**”) is to maintain the integrity of tennis and protect the health and rights of all tennis players.*

...

**B. Covered Players and Events**

1. *Any player who enters or participates in a **Competition, Event** or activity organized, sanctioned or recognized by the ATP, or who is an ATP member or who has an ATP ranking (a “**Player**”) shall be bound by and shall comply with all of the provisions of this Program ... Further, for each calendar year all such players shall, as a condition of entering or participating in any event organized or sanctioned by the ATP, deliver to the ATP a signed consent in the form set out in Appendix 2.*

...

**C. Doping Offenses**

Doping is defined as the occurrence of one or more of the following (each, a “**Doping Offense**”):

1. *The presence of a **Prohibited Substance** or its **Metabolites** or **Markers** in a **Player’s Specimen**, unless the **Player** establishes that the presence is pursuant to a **therapeutic use exemption** granted in accordance with*

**Article E.**

**a.** *It is each Player's personal duty to ensure that no **Prohibited Substance** enters his body. A player is responsible for any **Prohibited Substance** or its **Metabolites** or **Markers** found to be present in his Specimen. Accordingly, it is not necessary that intent, fault, negligence or knowing **Use** on the Player's part be demonstrated in order to establish a Doping Offense under Article C.1; nor is the **Player's** lack of intent, fault, negligence or knowledge a defence to a charge that a Doping Offense has been committed under Article C.1.*

...

**J. Review Board**

**2. Review of Adverse Analytical Findings**

...

**e.** *If the Player does not request analysis of the **B Sample** within fourteen days of receipt of the notice specified in Article J.2.d., above, the Player shall be deemed (a) to have waived his right to have the **B Sample** analyzed; and (b) to have accepted the **A Sample** analytical results.*

...

**L. Automatic Disqualification of Individual Results**

1. *A Doping Offense committed by a Player in connection with or arising out of an **In-Competition** test automatically leads to **Disqualification** of the individual result obtained by the Player involved in that **Competition** with all resulting consequences,*



*including forfeiture of any medals, titles, computer ranking points and prize money (without deduction for tax) obtained in that Competition.*

...

## **M. Sanctions on Individuals**

...

### **2. Imposition of Ineligibility for Prohibited Substances and Prohibited Methods.**

*Except where the substance at issue is one of the specified substances identified in Article M.3, the period of **Ineligibility** imposed for a violation of Article C.1 (presence of **Prohibited Substance** or its **Metabolites** or **Markers**), Article C.2 . . . shall be:*

*First offense: Two (2) years' **Ineligibility**.*

...

*However, the **Participant** shall have the opportunity in each case, before a period of **Ineligibility** is imposed, to establish the basis for eliminating or reducing this sanction as provided in Article M.5.*

### **3. Lesser Sanction for Specified Substances.**

*The **Prohibited List** may identify specified substances that are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or that are less likely to be successfully abused as doping agents (a "**Specified Substance**"). Where a Player can establish that the **Use** of such a Specified Substance was not intended to enhance sport*

*performance, the period of **Ineligibility** found in Article M.2 shall be replaced with the following:*

*First offense: At a minimum, a warning and reprimand and no period of **Ineligibility** from future **Events**, and at a maximum, one (1) year's **Ineligibility**.*

...

**5. Elimination or Reduction of Period if Ineligibility Based on Exceptional Circumstances.**

*a. If the **Player** establishes in an individual case involving a Doping Offense under Article C.1 (presence of **Prohibited Substance** or its **Metabolites** or **Markers**) or . . . that he bears **No Fault or Negligence** for the offense, the otherwise applicable period of **Ineligibility** shall be eliminated. When the case involves a Doping Offense under Article C.1 (presence of a **Prohibited Substance** or its **Metabolites** or **Markers**), the **Player** must also establish how the **Prohibited Substance** entered his or her system in order to have the period of **Ineligibility** eliminated. In the event that . . .*

*b. This article M.5.2 [sic] applies only to Doping Offenses involving Article C.1 (presence of **Prohibited Substance** or its **Metabolites** or **Markers**), Article . . . If a **Player** establishes in an individual case involving such offenses that he bears **No Significant Fault or Negligence**, then the period of **Ineligibility** may be reduced, but the reduced period of **Ineligibility** may not be less than one-half of the minimum period of **Ineligibility** otherwise applicable. . . . When the Doping Offense involves Article C.1*

*(presence of **Prohibited Substance** or its **Markers** or **Metabolites**), the **Player** must also establish how the **Prohibited Substance** entered his or her system in order to have the period of **Ineligibility** reduced.*

...

**7. Disqualification of Results in Competitions Subsequent to Sample Collection**

*In addition to the automatic **Disqualification**, pursuant to Article L, of the results in the **Competition** that produced the positive **Sample**, all other competitive results obtained from the date a positive **Sample** was collected (whether **In-Competition** or **Out-of-Competition**) or other Doping Offense occurred through to the date of commencement of any **Ineligibility** period shall, unless fairness requires otherwise, be **Disqualified** with all of the resulting consequences, including forfeiture of any medals, titles, computer ranking points and prize money (without deduction for tax).*

**8. Commencement of Consequences.**

Any **Consequences** set out in the decision of an **Anti-Doping Tribunal** shall come into force and effect on the date that the decision is issued, save that:

...

*c. The period of **Ineligibility** shall start on the date that the decision is issued, provided that:*

*(i) any period during which the **Player***

*demonstrates he has voluntarily foregone participation in Competitions shall be credited against the total period of **Ineligibility** to be served; and*

...

## APPENDIX ONE

### DEFINITIONS

**No Fault or Negligence.** The Player establishing that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had **Used** or been administered the **Prohibited Substance** or **Prohibited Method**.

**No Significant Fault or Negligence.** The player establishing that his or her 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 relationship to the Doping Offense

## APPENDIX THREE

### THE 2004 PROHIBITED LIST

Valid 1<sup>st</sup> January 2004  
(Updated 25 November 2003)

|   |
|---|
| <b>SUBSTANCES AND METHODS<br/>PROHIBITED IN-COMPETITION</b> |
|---|

### PROHIBITED SUBSTANCES

#### S1. STIMULANTS

The following stimulants are prohibited, including both their optical (D-and L-) isomers where relevant:

Adrafinil, amfepramaone, amiphenazole, amphetamine,  
... premoline ...

and other substances with similar chemical structure or similar pharmacological effects.

**REASONS**

27. The Player accepted the Lab results in respect of the A **Sample** and waived his right to have the B **Sample** analyzed. In so doing Rule J. 2. e. provides that the Player has accepted the A **Sample** analytical results. This in effect means that when coupled with the Player's own statements, a **Doping Offense** has occurred. There was a **Prohibited Substance** pemoline in his urine specimen. Therefore, a **Doping Offense** has been established and occurred under Anti-Doping Rule C. 1. It is so found by this Tribunal.
28. The Player committed a Doping Offense pursuant to an **In-Competition** test. Under Rule L. 1. there is an automatic **Disqualification** of the individual result obtained by the Player in that **Competition** with the resulting consequence of forfeiture of any medals, titles, computer ranking points and prize money obtained in the **Competition**. It is so found by this Tribunal.
29. Rule M. 7. provides that in addition to the automatic **Disqualification** referred to in Rule L. 1. all other competitive results from the date of the positive **Sample** to the date of commencement of any **Ineligibility** under this award shall be Disqualified unless fairness requires otherwise. In this case fairness does require that this rule not be applied. The medical treatment was an isolated event. The course of treatment with *Dynammin* was for a three week period that ended before the competition at which the Player tested positive. The Prohibited Substance at the level indicated in the Lab report was not performance enhancing and the course of treatment was over and the ingestion of the pills had ceased before the competition. There could be no on-going effect after the competition that would justify any subsequent **Disqualifications**. It is so found by this Tribunal.
30. The Tribunal's finding of proof of a Doping Offense leads to a period of **Ineligibility** under Rule M. 2. for a First Offense of two years. That period may be eliminated or reduced depending upon the application of Rule M. 3 dealing with **Specified Substances**; or, under either Rule M. 5 a. or b. if there is either no fault or negligence; or, no significant fault or negligence. This latter Anti-Doping Rule is known as **Exceptional Circumstances**.

31. For pemolin to be a **Specified Substance**, it must be listed in Appendix Three. There are several stimulants listed, but pemolin is not one of them. It might be that it should be listed but that is not a matter this Tribunal can decide. Therefore, Rule M. 3. has no application in this case to lessen the sanction which would otherwise arise by the application of Rule M. 2.
32. To be within the parameters of the **Exceptional Circumstances** in Rule M. 5. in either of its clauses a. or b. the Player must establish *how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated or ... reduced.* The ATP concedes that the evidence establishes how the pemolin entered the Player's body. It was caused by Dr. Malin recommending a therapeutic course of medical treatment associated with a medical diagnosis of depression. The pemolin was a component in the over the counter medicine *Dynamine*. Therefore, the parameters of **Exceptional Circumstances** have been met.
33. The use of the discretionary power extended to the Tribunal by Rule M. 5 by a finding of Exceptional Circumstances is dependant upon the facts of the case meeting the definitions found in Appendix One of the Anti-Doping Rules. Rule M. 5. a. is triggered when the proven circumstances are such that **No Fault** or **Negligence** has occurred. The definition requires that the Player *did not know or suspect, and could not reasonably have known or suspected even with the exercise of the utmost caution, that he had Used . . . [a] Prohibited Substance . . .* The Player could perhaps have met this definition on the 14<sup>th</sup> of September upon being treated at the outpatient department of the Moscow clinic. We say "could have" because that would depend upon the existence of an emergency or urgent care. The Player believes that to be the case. The Tribunal does not have to decide the point because he continued to take the *Dynamine* until the administered dosage ran out 21 days later, which would be approximately the 5<sup>th</sup> of October. Throughout that 3 week period the Player did not at any time consult with a sports medicine doctor or review the Prohibited List of Appendix Three. He certainly found the substance in December by examining the ATP web site for the list of prohibited substances. He could have done that search and inquiry in the 21-day period he took the medicine. His explanation of his conduct is that he relied upon his medical physician and trusted him. Yet he

knew the doctor was not a sports medicine doctor. He also knew that he had not told his doctor that he was a professional athlete who plays tennis under the ATP Anti-Doping Program. The Anti-Doping Rules are very explicit in Rule C. 1. a. in stating that *It is each Player's personal duty to ensure that no **Prohibited Substance** enters his body.* Therefore, the Tribunal cannot find that the Player has used utmost caution. If he had done so he should have known or suspected that *Dynamin* contained a Prohibited Substance. The Tribunal finds the Player could have reasonably known or suspected that he might be using a Prohibited Substance if he had made the disclosures to his doctor, made his own inquiries or used some caution to find out the nature of the substance for which he had been given a course of treatment. Therefore, the Tribunal finds that there are insufficient grounds to find that Rule M. 5. a. has application to this case.

34. If there is to be any reduction in the sanction it would have to occur under Rule M. 5. b. To apply this rule a finding that the Player had **No Significant Fault or Negligence** is required. That term of art in part takes its meaning from the concept of **No Fault or Negligence** and is defined additionally in Appendix One as the degree of fault in the totality of the circumstances was such that the fault was not significant in relationship to the Doping Offense.
35. The Tribunal does not accept that there was a medical emergency in this matter. The Tribunal finds the Player to have been reasonably credible in his testimony and does accept that in his depressed state he may not have been fully functioning cognitively. He explains that it never entered his head that he might be prescribed a medical treatment that involved ingesting a Prohibited Substance. However, when he needed medical help he knew enough to contact a sports medicine doctor who was at the Olympic Games in Athens at the time. He was cognisant of the need to consult specially trained medical personnel. He received his referral from a sports medicine practitioner and follows it up with attendance at the outpatient department of the clinic. The incomprehensible part of his conduct is not explaining that he was a professional athlete and that he was subject to an Anti-Doping program. In part that may be explained by the medical problems of severe back pain, lack of sleep and on-going depression. There is also a certain natural degree of reliance on a medical professional. The treatment worked and he improved greatly over the course of treatment and was ready to play in the Kremlin Cup. He contributed to his own difficulties by the silence in

explaining the situation to his physician. He also knew before the treatment to call a sports medicine doctor who was away in Athens. He also had the leaflet from the medicine he was using which contained a warning which he could have had translated. In that regard this case is similar to the *Torri Edwards v. IAAF & USATF* case cited to us but is distinguishable in that here the medicine was prescribed by a medical practitioner and was not a course of self treatment as it was in *Edwards*. The Player did nothing in the three week period of the treatment to determine what it was he was taking. The Tribunal finds that in the totality of all of these circumstances he was negligent and did have some fault. This is a case of degree of fault. In this case there is a proven medical diagnosis of depression. That condition will impact a person's cognitive functioning. His conduct would amount to significant fault were it not for his medical condition probably impairing his personal judgement. Although his judgement would have improved over the course of treatment which was very effective for him, in all of the circumstances and particularly because of the medical diagnosis, the line ought to be drawn in favour of the Player to say that there is no significant fault. There is fault but not to the degree that would take the Tribunal outside of Rule M. 5. b. Therefore, the Tribunal finds that it has the discretionary powers of the Exceptional Circumstances provision in the Anti-Doping Rules.

36. The period of **Ineligibility** under Rule M. 2 for a first offense is two years. That period may be reduced by Rule M. 5. b. but may not be less than one half of the two years otherwise applicable. The Tribunal therefore, has discretion to impose a sanction that would be between one and two years. The Player makes his living by playing professional tennis. The incident is a serious one in that pemolin is a powerful stimulant. However, there was a three-week course of treatment and then the substance was not used anymore. The treatment had been successful. There was no use of the substance in any competition other than the one where the sample was obtained. By that time the course of treatment was over. The Player acted in contravention of his personal duty under Rule C. 1. a. However, his careless disregard of the Anti-Doping Rules of the ATP had no impact on other tennis players. The reason for use of the substance was the result of a therapeutic course of medical treatment. In all of those circumstances and in recognition of the fact that a one-year suspension will result in the loss of an entire season of his professional career the Tribunal imposes the minimum period of **Ineligibility** that it has discretion to apply. Therefore,



the period of **Ineligibility** is to be one year in accordance with Rules M. 2 and 5. b.

37. Rule M. 8. requires that any **Consequences** set out in this decision are to come into force and effect on the date of the decision. The Tribunal finds that the exception in Rule M. 8. c. (i). applies in this case. It was accepted by the counsel for the ATP that the Player voluntarily did not play in any ATP sponsored events after he was notified of the Doping Offense. Therefore, the Tribunal finds that there was voluntarily forbearance by the Player in not playing in competitions after 8 December 2004. Therefore, the **Consequences** of this decision in terms of the period of **Ineligibility** are to take effect from 9 December 2004 as provided for by Rule M. 8. c. (i).
38. At the outset of the hearing counsel were asked if they agreed with the procedure to be followed and that it was fair and appropriate. Both counsel agreed that the procedure was satisfactory. At the conclusion of the hearing both counsel were asked if they felt they had had a full, complete and fair opportunity to set out and argue their case. Both counsel agreed that the procedure had been fair and they had no objections to what had transpired during the hearing.

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**DECISION**

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The Tribunal makes the following orders based upon the foregoing grounds and discussion in the above opinion.

1. A Doping Offense has occurred under Rule C 1. The Doping Offense involved the use of a stimulant listed in Appendix 3 (*The 2004 Prohibited List*) at S. 1 Class I Prohibited Substance.
2. Rule L. 1 disqualifies the results obtained at the “Kremlin Cup” tournament in Moscow, Russia in 2004. Any medals, titles, computer ranking points and prize money (without reduction for tax) obtained at the Competition are forfeited. The commencement of the foregoing Consequences is to be effective in accordance with Rule M. 8.
3. In the interests of fairness no order is made under Rule M. 7. for Disqualification or subsequent forfeiture of any medals, titles, computer ranking points and prize money subsequent to the “Kremlin Cup” until the commencement of the Ineligibility herein.
4. Under Rule M. 5. b. the period of Ineligibility otherwise applicable is reduced by one half to one year. In accordance with Rule M. 8. c. (i) this suspension shall commence on the 9th day of December 2004.

DATED THIS      DAY of MARCH 2005. SIGNED in COUNTERPARTS.

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Prof. Richard H. McLaren, C.Arb  
(Chairman)  
Barrister and Solicitor  
**SIGNED AT: London, Ontario, CANADA**

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Dr. Arturo Martí  
Rio Piedras, PUERTO RICO

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Dr. Gary Wadler M.D.  
Manhasset, N.Y., USA

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DATED THIS            DAY of MARCH 2005. SIGNED in COUNTERPARTS.

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Prof. Richard H. McLaren, C.Arb  
(Chairman)  
Barrister and Solicitor

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Dr. Arturo Martí  
Rio Piedras, PUERTO RICO  
**SIGNED AT: Rio Piedras, PUERTO RICO**

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Dr. Gary Wadler M. D.  
Manhasset, N.Y., USA

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The Tribunal makes the following orders based upon the foregoing grounds and discussion in the above opinion.

1. A Doping Offense has occurred under Rule C 1. The Doping Offense involved the use of a stimulant listed in Appendix 3 (*The 2004 Prohibited List*) at S. 1 Class I Prohibited Substance.
2. Rule L. 1 disqualifies the results obtained at the “Kremlin Cup” tournament in Moscow, Russia in 2004. Any medals, titles, computer ranking points and prize money (without reduction for tax) obtained at the Competition are forfeited. The commencement of the foregoing Consequences is to be effective in accordance with Rule M. 8.
3. In the interests of fairness no order is made under Rule M. 7. for Disqualification or subsequent forfeiture of any medals, titles, computer ranking points and prize money subsequent to the “Kremlin Cup” until the commencement of the Ineligibility herein.
4. Under Rule M. 5. b. the period of Ineligibility otherwise applicable is reduced by one half to one year. In accordance with Rule M. 8. c. (i) this suspension shall commence on the 9th day of December 2004.

DATED THIS        DAY of MARCH 2005. SIGNED in COUNTERPARTS.

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Prof. Richard H. McLaren, C.Arb  
(Chairman)  
Barrister and Solicitor

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Dr. Arturo Martí  
Rio Piedras, PUERTO RICO

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Dr. Gary Wadler M.D.  
Manhasset, N.Y., USA  
**SIGNED AT: Manhasset, N.Y., USA**