

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF
WORLD ATHLETICS**

Before:

Janie Soublière (Chair)

Dr Tanja Haug

Pedro Fida

BETWEEN:

WORLD ATHLETICS (WA)

Anti-Doping Organisation

-and-

BRIANNA MCNEAL

Respondent

DECISION OF THE DISCIPLINARY TRIBUNAL

A. INTRODUCTION

1. The Athletics Integrity Unit ('AIU') acting on behalf of World Athletics ('WA') has charged Ms. Brianna McNeal ('the Athlete') with an Anti-Doping Rule Violation ('ADRV') for "*Tampering or Attempted Tampering*" pursuant to Article 2.5 of the 2019 WA Anti-

Doping Rules ('2019 ADR') in connection with an AIU possible Missed Test investigation. WA submits that the Athlete obstructed or delayed the investigation by providing the AIU false, misleading or incomplete information or documentation in contravention of the ADR.

2. WA submits that the Athlete jeopardised its results management of a Missed Test by (i) deliberately providing false information with the intention of evading the operation of the ADR by altering medical documents for an improper purpose and (ii) engaging in conduct deliberately designed to subvert the AIU's Doping Control Process.
3. The Athlete denies the charge and explains that she neither deliberately provided false information to the AIU nor intended to subvert the AIU's investigation.

B. FACTUAL BACKGROUND

4. The Athlete is a decorated 29-year-old track and field athlete from the United States who competes in hurdles. Among many achievements is a gold medal at the 2016 Summer Olympics.
5. In 2017, the Athlete is sanctioned for one-year by the United States Anti-Doping Agency ('USADA') for a Whereabouts related violation for missing three tests in a 12-month period in contravention of Article 2.4 of the 2015 World Anti-Doping Code ('WADC').
6. The Athlete is currently included in the WA Registered Testing Pool, has been included in a Registered Testing Pool since she began running track professionally in 2012 and has been tested at least 63 times during that period. For the avoidance of doubt, there is no suggestion that the Athlete has ever taken any Prohibited Substance.
7. On 12 January 2020, a Doping Control Officer ('DCO') attempts to test the Athlete at the address specified in her ADAMS whereabouts information for that date between 06:00 - 07:00 a.m., the time she has set as her 60-minute time slot. However, the Athlete is unavailable for testing at the time. Nobody answers the door during the full hour, nor the phone calls made by the DCO at the end of the timeslot. Accordingly, the DCO files

an Unsuccessful Attempt Report with the AIU pursuant to the applicable Anti-Doping Rules and Regulations.

8. On 30 January 2020, following its evaluation of the circumstances of the unsuccessful attempt to locate the Athlete on 12 January 2020, the AIU notifies the Athlete via e-mail of an apparent Missed Test and asks her to provide an explanation for the same.
9. At the time, one Missed Test (committed in June 2019) is recorded against the Athlete. The January 2020 Missed Test, if confirmed, would be her second Whereabouts Failure in a 12-month period.
10. On 13 February 2020, the Athlete submits an explanation for the Missed Test, claiming she was at her specified address for the duration of the one-hour period on 12 January 2020, but that on the previous day, 11 January 2020, she had undergone a “*surprise medical procedure*” (the nature of which was undisclosed, save that it was private in nature) at a clinic in Los Angeles (hereinafter the ‘Clinic’). The Athlete further explains that she had been prescribed pain medication and sedatives to assist with her recovery and that she was not aware this medication would render her unable to wake up to undergo testing at 06:00 on 12 January 2020. As a result, she had not updated her whereabouts information.
11. Along with her explanation she includes a copy of a handwritten medical note dated 7 February 2020 signed by a practicing physician at the Clinic which reads that the Athlete had a procedure on 11 January 2020 and lists medication given to her (‘the First Medical Note’).
12. On visual inspection, it appears to the AIU that the date of the treatment given on the First Medical Note has been manipulated and, on 4 March 2020, the AIU writes to the Athlete requesting disclosure of additional documentation in support of the treatment received on 11 January 2020.
13. On 14 March 2020, the Athlete submits two additional handwritten medical notes from the same physician (‘the Second and Third Medical Notes’), both indicating again that the treatment took place on 11 January 2020.

14. On visual inspection, it again appears to the AIU that the dates on the Second and Third Medical Notes have been manipulated. This leads to the AIU writing to the Athlete for a third time on 30 March 2020 requesting copies of all contemporaneous documents/notes/records related to her treatment.
15. The AIU receives the full medical file related to the Athlete's treatment on 15 April 2020. The file holds an original copy of the First Medical Note dated 7 February 2020 which states that the date of the Athlete's treatment was 10 January 2020. Pages 11 and 12 of the medical file also confirm that the Athlete's treatment took place on 10 January 2020.
16. The accurate date of the treatment, 10 January 2020, that should have remained on the First, Second and Third Medical Notes provided to the AIU by the Athlete thus seems inconsistent with her explanation for the Missed Test of 12 January 2020, which is based on the fact that she received the medication "just the day before."
17. On 3 August 2020, the AIU invites the Athlete to attend an interview to explain *inter alia* the apparent discrepancy in the dates appearing on the various Medical Notes that she had provided to the AIU in support of her explanation for the apparent Missed Test on 12 January 2020.
18. An interview takes place on 14 August 2020 between representatives of the AIU and the Athlete, accompanied by her legal counsel (hereinafter 'AIU Interview'). During that interview, the Athlete provides further information with respect to the circumstances of the apparent Missed Test on 12 January 2020, the medical procedure she underwent, and the documents provided in support of her explanation.
19. During the AIU Interview, the Athlete admits that she altered the date of the treatment on the three Medical Notes she provided the AIU because she genuinely recalled that the treatment had taken place on 11 January 2020 (a Saturday) and not on 10 January 2020 (a Friday).
20. When asked whether she had contacted the Clinic to confirm the date of her treatment or if she had asked the same question to her husband, who accompanied her to the

procedure, she answers that she had not sought confirmation of the relevant date from anyone before altering the same on the three Medical Notes.

C. PROCEDURAL BACKGROUND

21. On 13 January 2021, further to the AIU Interview and the information obtained thereafter, by way of a Notice of Charge under the *World Athlete Anti-Doping Rules* ('the AIU Notice'), the AIU charges the Athlete with a Violation of Article 2.5 ADR for "*Tampering or Attempted Tampering with any part of Doping Control*".
22. The Notice encloses multiple documents the AIU relies upon in support of the ADRV charge.
23. The AIU provisionally suspends the Athlete as of 13 January 2021. The Notice also provides that because this is the Athlete's second ADRV, the applicable consequence as a result of the asserted ADRV is a period of Ineligibility of 8 years. Finally, the Notice outlines the Athlete's procedural options going forward.
24. Upon receipt of the Notice, the Athlete exercises her right to a hearing before the WA Disciplinary Tribunal.

D. PROCEDURE BEFORE THE WA DISCIPLINARY TRIBUNAL

25. Janie Soublière is appointed as Chair of the Panel on 28 January 2021.
26. Further to Procedural Directions being issued on consent of the Parties on 1 February 2021, the Procedural Calendar is set, and two additional Panel Members are chosen to sit alongside the Chair, namely Dr Tanja Haug and Pedro Fida.
27. By way of the 1 February 2021 Procedural Order, the Parties agree that the AIU Notice would serve as the WA Brief and Exhibits and that further to the Athlete filing her Reply Brief on 10 March 2021, WA would file a Rebuttal Brief on 24 March 2021. All procedural calendar deadlines are respected.

28. WA requests in its Reply Brief that the Athlete produce additional documents, which she does to the extent she deems possible on 31 March 2021.

29. The Video Conference Hearing takes place on 7 April 2021. In attendance for WA are Laura Gallo and Olympia Karavasili from the AIU and WA Counsel Adam Taylor and Ross Wenzel. The Athlete attends with her Counsel, Howard Jacobs and Lindsay Brandon. The hearing was further attended by the Panel and Kylie Brackenridge from Sport Resolutions, the Disciplinary Tribunal's Secretariat.

30. At the outset of the Hearing, the Chair seeks the Parties' consent on a few procedural matters including the applicability of the 2021 ADR, the jurisdiction of the WA Disciplinary Tribunal to hear this matter and the Parties' acceptance of the composition of the Panel. All these matters are consented to by both parties.

31. WA calls no witnesses.

32. The Athlete calls as witnesses, her husband, Bryce McNeal, Dr Ghazaleh Moayedi, DO, MPH, FACOG, and testifies herself. All witnesses are cross-examined by WA.

33. At the end of the hearing all parties expressly state and confirm they were satisfied with the disciplinary procedures and that they had been given the opportunity for a full and fair hearing.

34. The Panel deliberates thereafter and now renders the following decision.

E. APPLICABLE LAW AND JURISDICTION

35. The AIU was established by WA to protect the integrity of athletics. WA delegates the implementation of its ADR to the AIU.

36. The Parties agree that:

- (i) The WA Disciplinary Tribunal Rules are the Rules that govern the Tribunal's adjudication of this dispute, not the Arbitration Rules of Sport Resolutions;

- (ii) The “*lex mitior*” principle applies. Therefore, even though the alleged ADRV occurred when the 2019 WA Anti-Doping Rules were in force, the 2021 WA Anti-Doping Rules apply generally to this matter. Notably, the applicable definition of the anti-doping rule violation of “*Tampering or Attempted Tampering*” and the applicable sanctioning regime shall be those provided in the 2021 WA ADR (hereinafter the ‘ADR’).
- (iii) Pursuant to Article 7 of the ADR, the AIU has jurisdiction for results management of the Athlete’s alleged ADRV; and
- (iv) Pursuant to Article 8 of the ADR, the WA Disciplinary Tribunal has jurisdiction to adjudicate the matter and this Panel’s composition has not been challenged.

F. LEGAL FRAMEWORK

37. The ADR defines *Tampering or Attempted Tempering of any part of Doping Control* as follows:

*“Intentional conduct which subverts the Doping Control process but that would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, offering or accepting a bribe to perform or fail to perform an act, preventing the collection of a Sample, affecting or making impossible the analysis of a Sample, **falsifying documents submitted to an Anti-Doping Organization** or TUE committee or hearing panel, procuring false testimony from witnesses, committing any other fraudulent act upon the Anti-Doping Organization or hearing body to affect Results Management or the imposition of Consequences, and any other similar intentional interference or Attempted interference with any aspect of Doping Control.”*

(emphasis is ours)

38. The Comment to the ADR’s definition of *Tampering* reads:

“For example, this Rule would prohibit altering identification numbers on a Doping Control form during Testing, breaking the B bottle at the time of B Sample analysis, altering a Sample by the addition of a foreign substance, or intimidating or attempting to intimidate a potential witness or a witness who has provided testimony or information in the Doping Control

process. Tampering includes misconduct which occurs during the Results Management process. See Article 10.9.3(c). However, actions taken as part of a Person's legitimate defense to an anti-doping rule violation charge shall not be considered Tampering. Offensive conduct towards a Doping Control official or other Person involved in Doping Control that does not otherwise constitute Tampering shall be addressed in the disciplinary rules of sport organisations."

39. The ADR define *Doping Control* as follows:

"Doping Control: All steps and processes from test distribution planning through to ultimate disposition of any appeal and the enforcement of Consequences, including all steps and processes in between, including but not limited to Testing, investigations, whereabouts, TUEs, Sample collection and handling, laboratory analysis, Results Management, and investigations or proceedings relating to violations of Rule 10.14 (Status during Ineligibility or Provisional Suspension)."

PARTIES' SUBMISSIONS

40. Both the Athlete's and WA's written and oral submissions have been carefully considered. For the sake of succinctness, only the most relevant arguments are recounted below with other relevant facts or submissions referred to where relevant in the Panel's reasons.

I) WA

41. WA argues that this is not a case about abortion, the medical procedure the Athlete has undergone, but rather about what followed; it is a case about the Athlete's conduct in the 6 months after the procedure; it is a case about the Athlete's falsification of documents and their submission in support of a very specific excuse.

42. WA relies on the ADR's definitions for Tampering and Doping Control and its Article 5.7.9 which provides that "*if an Athlete obstructs or delays an investigation (e.g., by providing false, misleading or incomplete information or documentation and/or by tampering or destroying any documentation or other information that may be relevant to*

the investigation), proceedings may be brought against them for a violation of Rule 2.5 (Tampering or Attempted Tampering)”.

43.WA submits that the Athlete has committed the ADRV of Tampering or Attempted Tampering pursuant to Article 2.5 ADR on the basis that (without limitation):

- she knowingly and deliberately submitted a false explanation to the AIU in an attempt to justify her Missed Test on 12 January 2020 (i.e., that her medical treatment had occurred on 11 January 2020 and not 10 January 2020); and
- she altered *for an improper purpose* (as per the definition of Tampering) the medical documents relating to her medical treatment at the Clinic on 10 January 2020 to support that false explanation;
- she submitted forged/fabricated evidence to the AIU in the form of the First Medical Note, which she deliberately manipulated to support her false explanation for the Missed Test on 12 January 2020;
- after the AIU requested that she produce further evidence to support her explanation, she submitted further forged/fabricated evidence in the form of the Second and Third Medical Notes, both deliberately manipulated to be consistent with the First Medical Note and to corroborate her false explanation for the Missed Test on 12 January 2020;
- she was forced to admit that she had manipulated the documents only when the AIU insisted upon the disclosure of her complete medical file direct from the Clinic, and;
- she then provided a false explanation as to why she engaged in such manipulation.

44.WA does not accept that the Athlete genuinely believes that she thought the date of the procedure was 11th of January and not the 10th. It submits that the Athlete deliberately provided false information as an explanation for her Missed Test, which she could not afford, with the intention of evading the operation of the ADR. WA submits the Athlete altered her medical documents for an improper purpose and engaged in conduct deliberately designed to subvert the Doping Control process which then jeopardised the AIU's proper results management of the 12 January 2020 Missed Test. They submit

these actions fall exactly within the ADR's definition of Tampering and the conduct prohibited by Article 5.7.9 ADR.

45. As this is the Athlete's second ADRV, WA submits that the Panel will only need to consider 10.9.1(a)(ii) and that it will need to consider a period of Ineligibility for the Tampering ADRV of between five (5) to eight (8) years depending on the Panel's assessment of her degree of Fault.

46. As to the Athlete's degree of Fault, WA submits that the Athlete's Fault must be deemed to be at highest end of the spectrum because *inter alia*:

- The Athlete tampered with three separate medical documents on two separate occasions over the course of several months.
- The Athlete never confessed her Tampering. She never volunteered that she had altered the doctor's note and it was only when she was confronted with this allegation by the AIU approximately six months later that she admitted to doing the same.
- It is unrealistic that she would have taken such a drastic and fraudulent step as to alter medical evidence signed by her own treating doctor, on multiple occasions, long after the procedure occurred, solely on the basis of an unverified belief.
- It is unrealistic that after receiving further medical evidence with the same date, also signed by her treating doctor, she would not have considered that maybe it was her recollection that was unreliable and refrained from Tampering with the further two Clinic notes.
- It is unrealistic that she would not have sought to verify her belief either when she attended at the Clinic in person on 4 February 2020 for a follow-up appointment, when she communicated with the Clinic to obtain the notes, or when she received a copy of her full medical records.
- The evidence suggests (e.g., social media activity) that her physical incapacity on the weekend of the Missed Test was less serious than how she has portrayed it.

- The Athlete should have known better, especially when she did not have a clean record.

47. Pursuant to Articles 10.3.1 and 10.9.1 (a) (ii) ADR, WA requests that the Athlete be subject to a period of Ineligibility of 8 years, beginning on the date that the decision imposing consequences is issued in this matter, with credit for the period of Provisional Suspension served.

48. Pursuant to Article 10.10 ADR, WA submits that all competitive results from 13 February 2020 through to the beginning of the Athlete's Provisional Suspension on 13 January 2021 should be disqualified with all associated Consequences.

49. WA requests a contribution to its legal costs.

II) THE ATHLETE

50. The Athlete argues that this is entirely a case about abortion and denies the ADRV. She submits that the abortion is the reason for the Missed Test and that her post procedure trauma is the sole reason she mistakenly altered the dates on her medical notes.

51. On the whole, she submits that:

- She did not answer the door to be tested on 12 January 2020 because she was still incapacitated and recovering from her medical procedure and that regardless of the explanation she might have given the AIU, under the circumstances, a Missed Test would be confirmed against her. In fact, she explains that neither she nor her husband had any idea that a DCO had presented himself to test her on 12 January 2020 until she was notified of the same 18 days later.
- The trauma of the medical procedure was enough to send her into a state of depression and disorientation which resulted in her mistakenly but genuinely believing that her abortion had taken place on the 11th instead of 10th January 2020.

She changed the date on the handwritten doctor's note based solely on this belief and for no other purpose.

- Her actions do not give rise to an intentional violation of Article 2.5 of the 2021 ADR and the charges against her should be dismissed.
- In the event this Panel finds that a Tampering ADRV did occur, her level of Fault must be considered to be at the lower end of the spectrum and her sanction reflective of the same.

(i) The 10 January 2020 Medical procedure

52. The Athlete's personal account of the circumstances surrounding her medical procedure are as follows:

- In early January 2020, the Athlete finds out she is pregnant. But because having the baby would mean that she would have to sit out the 2020 Tokyo Olympic Games, she makes a difficult but necessary choice of terminating the pregnancy. (She could of course have had the child since the Olympic Games were postponed.)
- She explains that the Clinic she chooses for the procedure is close to her home, is the most highly rated in her region and offers flexible hours that would reduce her time off training by getting the procedure on or around a weekend.
- Other than crawling into bed and sleeping for long periods of time, she does not remember much about the days immediately following the 10 January 2020 medical procedure due to the heavy sedatives she was given as well as her frame of mind at the time.

(ii) The Explanation to the Missed Test and evidence submitted in support

53. Further to receipt of the AIU's Missed Test Notice on 30 January 2020, she felt she needed to provide an explanation to the AIU, realizing that she likely simply did not hear

the DCO as a result of her post medical procedure state. She did not however want to disclose the nature of the medical procedure she has undergone.

54. In her written submission, she alleges the Missed Test would have essentially only been her first “strike”¹. She submits that she could have ignored the AIU’s request for an explanation. Instead, she decided to cooperate and provide one, all the while trying to avoid disclosing to the AIU that she had undergone an abortion.

55. As such, on 13 February 2020, the Athlete provided an explanation that she underwent an emergency medical procedure that required the prescription of sedatives on 11 January 2020.

56. Further to the AIU inquiring about the nature and date of the procedure, the Athlete asked the Clinic’s receptionist for a note confirming that she had the procedure. She explains that the handwritten note that was faxed to her indicated that the procedure had taken place on 10 January 2020, but that believing it to be incorrect, the Athlete amended the date to 11 January 2020. She submits that, at the time, she genuinely believed that to be the correct date.

57. When the AIU requested further medical records related to the procedure, the Athlete requested through the Clinic receptionist that the physician provide additional documentation clarifying the severity of the procedure. Upon receipt of the two additional notes, which indicate the procedure took place on the 10th and still believing that the procedure had been performed on 11 January and not 10 January, she again corrected what she believed was the date of the procedure and submitted the altered notes to the AIU without further comment.

58. When the AIU demanded further contemporaneous proof of the medical procedure that the Athlete had undergone, on or about 15 April 2020, the Athlete promptly forwarded a copy of her full medical records documenting the abortion.

59. The Athlete submits that her explanation for the Missed Test is not inconsistent with the medical records, save that the procedure took place 24 hours prior. She explains that

¹ At the hearing the Athlete accepts and WA confirms that it would effectively have been her second whereabouts failure in 12 months by virtue of the June 2019 Missed Test.

in good faith and to cooperate with the investigation, she voluntarily submitted to an interview with the AIU explaining why she changed the date. She maintains that throughout this process her primary concern has been with how to best cooperate with the AIU's requests while protecting her privacy regarding the abortion procedure.

60. While she admits to making a mistake, she submits that she honestly believed the date of her medical procedure was 11 January 2020, that she was in a state of trauma at the time which resulted in her erroneously confusing the dates in her disorientation and that the intent behind providing as little information as possible to the AIU whilst still cooperating and not to subvert to the doping control process.

(iii) Lex mitior

61. The Athlete cites various case law when relying on the doctrine of *lex mitior*, the well-established legal principle whereby if the law relevant to the offence of the accused has been amended, the law more favourable to the person charged should be applied. She submits that the doctrine enters into action when anti-doping rules have changed (here, January 2021), between the asserted violation and a Tribunal's adjudication of the charge.

62. She submits *lex mitior* is relevant and applicable when the definition of an offence is amended and identifies two types of situations that would justify the application of *lex mitior*:

- i. where the new rules provide for a reduced sanction; or
- ii. where the new rules redefine the disciplinary offense.

63. She thus submits she is entitled to the benefit from *lex mitior* because:

- 2021 ADR provides both for a reduction in sanction if a "Tampering" violation is to be found (Article 10.3.1 - whereas under the previous Code, the sanction was 4 years or no sanction at all) and the term "Intentional" to qualify a Tampering violation (Definitions).

- Article 10.9.1 (a) of the 2021 ADR further entitles her to benefit from additional reduction in any sanction that could be imposed because of her low degree of Fault.

(iv) Intent to Tamper

64. The Athlete submits that the objective elements of the definition of Tampering specifically target intentional conduct that “*subverts the Doping Control process.*” This is supported by the examples outlined in the commentary, with language such as “*interfering*”, “*obstructing*” and conduct “*to alter results or prevent normal procedures from occurring*”. She argues the intent of Article 2.5 ADR is not meant to encompass all offensive or improper conduct during the course of the proceedings, but rather only conduct that is *a priori* capable of impacting the process, which she argues she did not do. She also argues that acts of Tampering must be balanced with the legitimate interest of a person under a charge to defend themselves in relevant proceedings.

65. She argues that Tampering is an offense that requires intent on the part of the individual charged, that intent is specific in that it must incorporate an additional component of purpose; in other words, the intention must be directed at “*subverting*” the doping control process in the various manners described in Article 2.5 and the definition of Tampering (“*intentionally interfering*”, “*providing fraudulent information*”, “*improper purpose*”). She thus argues that the AIU must also establish subjective intent to meet its burden of proof.

66. Relying on case law, she submits as follows:

- In cases where CAS and first-instance tribunals found a violation of Tampering, there was always clear evidence of fraudulent behavior that was obviously directed at misleading the authorities or a tribunal that actually subverted the process and must be assessed individually.
- Tampering in the context of disciplinary proceedings must be given a restrictive interpretation, in particular, in *IAAF v. Jeptoo*² the CAS panel set a high threshold

² CAS 2015/A/3979 at paras 147 et seq. Hereinafter ‘Jeptoo’.

for finding Tampering against the person charged in light of the right to defend oneself and not to bring forward elements detrimental to one's case.

- Because Tampering is a serious offense, CAS has held that Tampering charges “*must be proven to a high threshold within the onus of comfortable satisfaction.*”³
- For her conduct to be “*fraudulently misleading*” and to satisfy the definition of Tampering, there must be an intent to subvert the doping control or an “*intent to subvert the investigation,*”⁴ and “*an intent to deceive*”⁵.
- For conduct to subvert the doping control process, the conduct “*must be such that it possibly impacts*” the specific stage of the doping control process in a way that “*undermine[s] the authority of the Results Management institution or anti-doping organization*”⁶.

67. Relying on the above case law, the Athlete thus argues that WA does not satisfy its burden of proof with respect to the alleged intentional Tampering. She submits that a truthful disclosure, or even a mistaken disclosure, is not capable of subverting the doping control process nor can it be intended for an improper purpose to prevent normal procedures from occurring.

68. For the foregoing reasons, the Athlete submits that she did not intend to subvert the doping control process in any manner with respect to her 12 January 2020 Missed Test. Therefore, the Tampering charge against her should be set aside.

(v) Applicable consequences and assessment of Fault

69. If this Panel disagrees with her and finds that WA has established its Tampering charge, the Athlete argues that her Fault should be considered to be at the lower end of the spectrum. In this regard she relies on *USADA v. Cosby and Cilic v. ITF*⁷ and the

³ CAS 2017/A/4937 DFSNZ v. Murry par. 130. Hereinafter ‘Murray’.

⁴ Ibid Par 128.

⁵ CAS 2013/A/3341 WADA v. Pineda Contreras at par. 128.

⁶ Jeptoo supra at par. 147 and Murray supra at par. 144.

⁷ CAS 2013/A/3327 at par. 76(d)(iii) – hereinafter Cilic, citing CAS 2021/A/2756 at par. 8.45 et seq.

testimony of Dr. Moayedi and her spiritual advisor Ms. Jennifer Schaefer. She argues that she should not be faulted for her lack of judgment given the traumatic event she had just suffered. She empathetically submits the many subjective elements of the case, specifically the abortion trauma and stress, must be factored into this Panel's consideration of whether her actions were a careless mistake in response to an overwhelming trauma and the fear of having to disclose the same.

70. If a second violation is to be found, she submits that her sanction should range between a minimum of 3 years and a maximum of 4 years, not 8, because her commission of the ADRV was not intentional and the result of exceptional circumstances placing her Fault at the lowest degree.

H) ISSUES

- *Does Lex Mitior Apply?*
- *Does WA meet its burden of proof to establish an ADRV?*
- *If so, what is the Athlete's degree of Fault?*
- *What are the appropriate applicable consequences?*

I) PANEL'S DELIBERATIONS

71. Although the psychological and physical effects of an abortion are inextricably linked to this case, the Panel finds that this case is first and foremost about Tampering. That is the charge. The factual, evidentiary and regulatory basis upon which this decision is being taken seeks to determine if the Athlete committed a Tampering violation, and if so, to assess the Athlete's degree of Fault vis-à-vis that violation.

I) Does Lex Mitior apply?

72. The Panel accepts and concurs that there is no discretionary element to the application of the *lex mitior* doctrine once it is found that the case appropriately falls within its scope.

73. As stated above, this point has been agreed upon by both parties. The evidence before this Panel regarding the alleged ADRV is thus to be considered applying the 2021 ADR and she shall benefit from all provisions of the ADR which are most favorable to her.

74. Consequently, the 2021 ADR shall also be interpreted in accordance with the 2021 World Anti-Doping Code ('WADC').

II) Does WA meet its burden of proof to establish an ADRV?

a) The right to avoid self-incrimination in the results management process

75. WA shall meet its standard of proof if the ADRV is established to the comfortable satisfaction of this Panel. The ADR are clear on this standard. Yet, the Athlete argues that this burden should be even higher keeping in mind a respondent's general privilege against self-incrimination in judicial proceedings. The Panel rejects this argument.

76. The Panel accepts and agrees that in criminal and disciplinary law, individuals charged cannot be pressured to produce evidence to incriminate themselves, especially under threat of a sanction that is comparably harsh to the sanction incurred for the offence charged. However, the circumstances here are not akin to self-incrimination. The Athlete was given an opportunity to provide an explanation to a Missed Test. She was not pressured to do so by the AIU. As she confirms, she did so of her own volition, albeit altering medical records in the process.

77. Although both parties rely on Jeptoo, the Panel finds WA's interpretation of some salient passages of that case to be most germane here when discussing Ms Jeptoo's conduct exceeding the threshold of legitimate defence whence it states:

"forging a document for the use of a judicial proceeding is a criminal offence not only in Monegasque law... but also under Swiss law (see Article 251 of the Swiss Criminal Code)"

78. The Athlete relies heavily on Murray, underlining that therein, the CAS panel in ultimately dismissing the Tampering charge acknowledged that although it was satisfied the cyclist provided false information during his interview, “[a] lie, in itself, does not amount to fraud or to providing ‘fraudulent information.’”⁸

79. However, this Panel does not abide by this reasoning and is rather more aligned with the commentary of the sole Arbitrator in the *IAAF v. Sumgong*⁹ case relied upon by WA, in which the Panel held that:

“the submission of the false medical documents by her to the Kenyan Tribunal can only be analysed as a deliberate attempt to prevent the administration of justice in her case and improperly to affect the outcome of the hearing in respect of the AAF for r-EPO. Perjury and forgery inevitably go beyond the bounds of legitimate defence under any civilized system of law”.

b) Intent to subvert the doping control process

80. The Athlete argues that in order to successfully establish the ADRV to the required standard of proof, it is necessary for WA to establish her intention to subvert the doping control process. The effect of the Athlete’s misinformation must be considered in determining whether it subverted this same doping control process—particularly in light of the seriousness of Tampering charges. The argument she brings forth is that there needs to be a causal link between the impugned action and the result. She submits that regardless of her medical notes, the outcome would have been the same and the Missed Test would have been confirmed.

81. In making this argument, she again relies on Murray where, after evaluating the effect and influence of the athlete’s false statements on DFSNZ’s investigation, the panel concluded that both the actual and intended effect “*was so negligible as to arguably amount to having . . . no effect on the investigation at all, much less result in ‘subverting’ the process*” or preventing normal procedures from occurring.

82. WA submits that the doping control process was subverted, because at the time the false documents were submitted, WA (via the AIU) had no knowledge that the Athlete’s

⁸ Murray supra at paras. 141 and 143.

⁹ SR/140/2018 par 99. Hereinafter Sumgong

explanation was anything other than authentic. If the AIU had not developed suspicions and decided to investigate further, the Athlete's explanation would have likely been evaluated on its face as a genuine explanation. WA argues that the fact that such an outcome could have occurred, and that the Athlete was content to see it occur by her actions and inactions (e.g., not admitting to the alteration until confronted with it), amounts to subversion of the doping control process. The Panel concurs.

83. The Panel does not rule out the possibility that the Athlete's explanation, if accepted by the AIU, may have had an influence on the assessment of the 12 January 2020 Missed Test. In any case, the Panel cannot find that her actions neither frustrated the Doping Control process nor the AIU's investigation.

84. The Panel finds that causation is not a requirement to establish a Tampering violation. If an Athlete provides fraudulent documents and is discovered to have done so, but these documents are ultimately rejected for lack of probative value or other, this cannot and does not negate the deceptive or fraudulent act. There would be little disincentive for an athlete to try to tamper in this way should this be the case.

85. Even if the Athlete did sincerely believe that the procedure took place on 11 January 2020, the Panel finds that it was both reckless of her and a breach of Article 5.7.9 ADR to alter official medical notes and tender them into evidence without making any checks as to the veracity of her belief and without disclosing that she had altered them and why. If she was convinced that the date of the procedure was the 11th, knowing the importance of this piece of evidence in support of her Missed Test explanation, she should have called the Clinic to have them verify the accuracy of the date to allow her to be sure that the evidence she was tendering was not falsified or misleading. In any case, the Athlete was never entitled to personally alter a medical document signed by a physician. She could, for example, also have explained to the AIU in a supplementary note that the indicated date was wrong (whether this was only her recollection or confirmed) or asked the Clinic for an amended note.

86. Then, making matters far worse for herself, she altered the Second and Third Medical Notes approximately four weeks later. Again, without conferring with anyone, without requesting from the Clinic that a correct note be resent to her, without disclosing her

alteration, and without any regard for the fact that she was Tampering with the evidence she intended to and did submit to the AIU by falsifying it. The expanded definition of Tampering is on point as it now expressly includes “- *without limitation* - ... *falsifying documents submitted to an Anti-Doping Organisation*”.

87. Strikingly, when asked by WA if she had written down the date for her procedure in any calendar she unequivocally stated that she had not done so because *it was a date too important for her to forget*. She had thus cemented the January 10 date in her brain as *a date not to forget*.

88. The Panel comprehends even less how the Athlete could have been so wrong, especially considering the fact that – as clearly presented by the AIU - she has never been to the Clinic on a Saturday. The Athlete had been to her first visit one week prior on a Friday (3 January) – which reasonably would mean that her follow up appointment in a week would also be a Friday, she also stated herself that she has never gone to the Clinic on an off-training day (e.g.: a Saturday).

89. Taking all these circumstances into account, the Panel simply cannot condone the fact that on her own volition the Athlete altered three medical notes and submitted them to the AIU on two different occasions as evidence to support her explanation to the AIU.

90. To dispel any doubt in this regard, both Annex I of the 2019 International Standard for Testing and Investigations and Annex B of the 2021 International Standard for Results Management (applicable to the ADR) settle that all communications related to alleged Whereabouts Failures are clearly part of the results management process. Thus, the Athlete’s subversive actions were carried out in the course of Doping Control as defined in the ADR and fall squarely within the actions proscribed in the definition of Tampering.

c) Finding on Tampering

91. The Panel finds that an athlete cannot and shall not falsify and or alter pieces of evidence in the course of results management with impunity.

92. Intent to subvert (whether objective or subjective) logically rests on an athlete committing an act that subverts any part of the Doping Control process, including results

management for Whereabouts Violations, intentionally. The Comment to Article 10.2.3 ADR, (which defines intentional ADRVs under Article 10.2) provides that:

“...the term 'intentional' as used in these Rules means that the person intended to commit the act(s) based on which the Anti-Doping Rule Violation is asserted, regardless of whether the person knew that such act(s) constituted an anti-doping rule violation.”

93. WA submits that the evidence demonstrates that the Athlete did act intentionally to subvert the doping control process - by personally falsifying the dates on the Clinic notes and submitting these altered notes to the AIU. For the reasons set out above, the Panel agrees. Manually changing three hand-written medical notes in a defence to a Missed Test allegation, without verifying the dates of said procedure with the Clinic or anyone else before making such alterations or disclosing such alteration before tendering them to the AIU in support of said defence, can only be considered an intentional act. This must be so - whether or not the Athlete knew that such acts constituted a violation of Article 2.5 ADR.

94. By all accounts, even if still traumatized from a procedure months before, the Athlete failed to verify her belief when the full clinical records became available (in April 2020) as a reasonable person would have done.

95. In summary, the Panel finds that the Athlete intentionally altered evidence on two different occasions during the results management process, namely on 13 February 2020 and on 14 March 2020, when the Athlete submitted the First, Second and Third Medical Notes to the AIU, thereby subverting Doping Control. Those actions cannot be construed as being part of her legitimate defense to an anti-doping rule violation. Repeated falsification of evidence *“inevitably goes beyond the bounds of legitimate defence under any civilized system of law”*¹⁰.

96. For the reasons above, this Panel finds that the Athlete committed a Tampering violation as squarely defined in the 2021 ADR.

III) What is the Athlete’s degree of fault vis-à-vis the ADRV?

¹⁰ Sumgong supra at par 99.

97. Pursuant to Article 10.3.1 ADR, which outlines the period of ineligibility for a Tampering offence:

*“For violations of Rule 2.5, the period of Ineligibility will be be four (4) years except: (i) in the case of failing to submit to Sample collection, if the Athlete can establish that the commission of the anti-doping rule violation was not intentional, the period of Ineligibility shall be two (2) years; (ii) in all other cases, **if the Athlete can establish exceptional circumstances** that justify a reduction of the period of Ineligibility, the period of Ineligibility **will be in a range from two (2) years to four (4) years depending on the Athlete’s degree of Fault...**”*

(Emphasis is ours)

98. Articles 10.9.1 ADR, which deals with sanctions applicable to a second ADRV provides that:

10.9.1 Second or third anti-doping rule violation:

(a) For an Athlete or other Person’s second anti-doping rule violation, the period of Ineligibility will be the greater of:

(i) a six-month period of Ineligibility; or

(ii) a period of Ineligibility in the range between:

(aa) the sum of the period of Ineligibility imposed for the first anti-doping rule violation plus the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation; and

(bb) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation.

The period of Ineligibility within this range will be determined based on the entirety of the circumstance and the Athlete or other Person’s degree of Fault with respect to the second violation.

99. Therefore, the first step of the legal exercise is to determine what the Athlete’s period of Ineligibility should be for the Tampering violation if it was treated as a first ADRV by assessing her degree of Fault.

100. The second step, which is somewhat redundant, is to mathematically determine the final period of ineligibility in the range as set out in Art. 10.9.1 (a)(ii) ADR based on the Panel's assessment of the entirety of the circumstances and the Athlete's degree of Fault with respect to the Tampering violation.

a) *What is the Athlete's degree of Fault in relation to her established Tampering violation?*

101. Article 10.3.1 ADR provides for a possible reduction of the applicable period of Ineligibility (here of 4 years if it were a first ADRV) based on the Athlete's degree of Fault. The reduction however may not be less than one-half of the period of Ineligibility otherwise applicable. Thus, when determining the applicable sanction for the Tampering violation, as though it was the Athlete's first violation, the sanction may be reduced to down to 2 years based on her degree of Fault vis-à-vis the Tampering violation.

102. The definition of "Fault" provided in the ADR is germane to the Panel's assessment at all stages of the legal exercise:

"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 Article 10.6.1 or 10.6.2."

Objective factors

103. The Athlete brings forth a myriad of mitigating factors for the Panel to consider in its assessment of her Fault. However, none of these mitigating elements can fully

extinguish the fact that the Athlete's actions fall squarely within the definitions of Tampering and that the factors to be considered by this Panel as outlined in the definition of Fault are, for the most part, adverse to her.

104. By deliberately manipulating evidence in the course of the doping control process and throughout the AIU investigation, as an experienced athlete who should have perceived the high level of risk in her actions, she has breached her duty of care.

105. The argument to the effect that the alteration was obvious and therefore less significant is not convincing. Indeed, as WA rebuts, if the Athlete's counsel did not realize the Medical Notes were altered before submitting them to the AIU on the Athlete's behalf – they cannot argue that the alteration was obvious.

106. The Athlete submits that she genuinely believed the procedure had taken place on the 10 January when she altered the First Medical Note. The Panel might have been willing to accept her line of defense had she only once changed the date on the Medical Notes. But to do it on two occasions, and in three different documents without thinking to verify the accuracy of the dates and explaining the alteration, perpetuated what has been already confirmed as Tampering above. In so doing her actions fell well below the standard of care and investigation expected of all athletes, especially experienced ones like herself.

Subjective factors

107. Notwithstanding the above, the ADR's definition of *Fault*, and often cited Cilic CAS case does also allow a Panel to consider subjective elements surrounding an ADRV in its assessment of the specific circumstances in which an athlete found him or herself at the time an ADRV was committed.

108. The Athlete aptly relies on the Armstrong v. WCF CAS award¹¹ in this regard. There, the Athlete's wife was recently deceased and, without supporting psychiatric testimony

¹¹ CAS 2012/A/2756

to that effect, the Panel concluded that the Athlete was clearly affected by the grief, trauma and stress of that incident in stating:

“The Panel thus recognizes that the Appellant was in a state of emotional stress which led him to ignore the level of care which he would otherwise have observed. The Panel also wishes to add that during the hearing the Appellant came across as an honest man who regrets the error committed.”

109. No one has argued or can argue that what the Athlete went through was not or could not have been a traumatic experience:

- She found out she was pregnant, which she and her husband had been anticipating for years.
- She very much wants a family.
- She elected to abort to put her career first and give herself (possibly a last) opportunity to compete at the Tokyo Olympic Games.
- She had the abortion with all the trauma and emotional, physical, and spiritual stress and guilt that it carried, only to find out about two months later that the Olympic Games would be postponed due to the COVID-19 pandemic.
- She could have had the baby after all and never gone through with the procedure.
- She suffered from various physical problems and side effects because of the procedure which had her worried and preoccupied.
- She had to live with the guilt of disappointing her spouse and her God.

110. These were not easy times for the Athlete.

111. The Panel accepts that the fact the Athlete was able to compete, to update her whereabouts, and to seemingly go about her regular daily life in the months after the procedure is not indicative of her emotional state.

112. The Panel also accepts that when she received the Missed Test notice, it proved to be an additional burden for her to carry and perhaps the proverbial drop that made the

glass overflow. She then made an extraordinarily poor decision and altered the date of her procedure on her First Medical Note. And, still in the same frame of mind a few weeks later, having once gone down the rabbit hole, she perpetuated this extraordinarily poor decision when she again altered the date of her procedure on the Second and Third Medical Notes.

113. The Athlete argues that the magnitude of the impact of the medical procedure and the circumstances surrounding the same impaired her judgement, memory, and reason and relies on the expertise of Dr. Moayedhi in this regard.

114. WA argues on the other hand that Dr Moayedhi did not see or know Ms. McNeal at the time of the procedure in 2020 and has never examined her or seen any of her medical records other than the medical record she obtained in preparation for the hearing. WA attempts to discredit Dr. Moayedhi's experience as an ob-gyn and argues that she is neither a psychiatrist nor a psychologist and thus cannot provide a compelling or credible expert opinion on the Athlete's frame of mind.

115. The Panel accepts Dr. Moayedhi's evidence, which stands unopposed, and has given it significant weight. Although her CV and ample experience in abortion and ob-gyn work speaks for itself, she presented herself as a capable, credible expert. She explains that she is trained in psychosocial counselling, has written extensively on the psychology of abortion and is qualified to treat people for moderate mental treatment. Most importantly she is an expert in abortion, has conducted many abortions and has extensively studied and treated women for pre and post "abortion stigma".

116. Although WA has argued that the fact that the Athlete returned to regular activities, and competition was indicative that she was in no way traumatized or dealing with post abortion repercussions, Dr. Moayedhi's evidence, which the Panel accepts, is that it is not uncommon that women return to regular activities soon after an abortion, and that it is not surprising that an elite athlete would have done so.

117. According to Dr. Moayedhi's report, the stigma many women feel from abortion causes them to under report and to misclassify their abortion experiences. Women who have had abortions fear social judgement, experience self-judgement and have a desire for secrecy about their abortion. This coincides with the Athlete's evidence that "*if the news*

spread that she had had an abortion, it would get out to her family and fans and the thought of that crushed her soul" solidifying her perceived lack of social support in her decision.

118. Indeed, the Athlete credibly testified to the extreme guilt that she felt for the abortion, for her unborn baby, for letting her husband down, for acting in opposition to her faith.

119. It does not take a psychiatrist to accept that anyone who would have gone through what the Athlete had at that point might be impaired to a certain degree in their decision-making abilities.

120. The Athlete most certainly could have verified the dates of the procedure prior to submitting the three Medical Notes as evidence to the AIU. She also should have disclosed any alteration she had made. In a crucial and irreversible error of judgement, she failed to do so on two different occasions.

121. The Panel finds that the Athlete has been contradictory in much of her evidence and submissions. Although this contradiction does discredit her credibility to a certain degree, it also exhibits to the Panel that at the time, and still today, in relation to the months following her abortion, her cognitive ability was hazy, her state of mind jumbled and her judgement clouded. It was an incredibly stressful and difficult period for her, physically, emotionally, spiritually and it undoubtedly affected her, much to her detriment.

122. The ADRV for Tampering must be and has been confirmed on the facts. Although the AIU has adamantly argued that the Athlete's story is unrealistic and not credible, the Panel finds that the subjective elements of this case do allow the Athlete to benefit from a reduction of her presumptive sanction based on her degree of Fault if only because we accept that she was dealing with the effects of abortion stigma, the main characteristics of which she displayed, as outlined in Dr. Moayed's report and testimony which again, although contested, stand unopposed.

123. The Athlete has requested that her Fault be set at the lowest possible end of the spectrum. Although the Panel has assessed her Fault taking into consideration the subjective elements of her circumstances as provided for in the ADR and case law, this

decision must most significantly be made based on the facts and evidence before it and in application of the applicable rules as laid out above.

124. Athletes must respect doping control and results management processes. For the Athlete to blatantly disregard both to circumvent the possible consequences of a Missed Test, regardless of her belief of what the date might have been, was an unfortunate monumental error in judgement that, quite regrettably, makes her at Fault for the ADRV.

125. Keeping in mind the seriousness of the ADRV committed, the Panel thus finds that the factors the Athlete raises to assuage her Fault are compelling but not sufficiently so to reduce her period of Ineligibility any further than 1 year.

IV) What is the Athlete's degree of Fault in relation to the second ADRV?

126. The Panel has already decided above that the Athlete's degree of Fault vis-à-vis the Tampering charge allows for a reduction of sanction of 1 year from what would normally be a 4-year anti-doping rule violation, thereby resulting in a 3-year period of Ineligibility if the Tampering ADRV was considered her first.

127. With regards to the Panel's assessment under Article 10.9.1 (a)(ii) ADR, it logically follows that the impairment caused by abortion stigma and the stress in her life and state of mind will also be taken into consideration by the Panel in assessing her degree of Fault vis-à-vis her second ADRV. To avoid redundancy, our reasons need not be repeated.

128. As an additional evidentiary element to be noted in this second step of the exercise, the Panel is also mindful in its assessment of the Athlete's Fault vis-à-vis the second ADRV that although she had sent a reminder for herself to update her whereabouts weekly, the Athlete appears to have lacked diligence in avoiding more Whereabouts Violations. To always set her 60 min slot in the morning at a time when she, according to both her and her husband, almost never wakes up and thus needs to rely wholly on her dogs barking, her husband, and a sometimes-faulty doorbell to greet DCOs, is not considered diligent, especially considering she has been sanctioned in the past for a Whereabouts Violation.

129. For the reasons set out above, the Panel's assessment of the evidence before it is that the subjective elements of this case are very specific and exceptional. The personal circumstances and trauma the Athlete was suffering at the time she committed her Tampering ADRV justify a reduction of her degree of Fault.

130. Notwithstanding her impaired state, the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk in taking such actions was disregarded when she intentionally altered Medical Notes and failed to admit the same as soon as the error was discovered. (Because much time was spent debating this issue at the hearing, the Panel notes that it accepts that the Athlete did not look at her medical file upon receipt. However, according to the testimony heard at the hearing and the AIU Interview transcript, she certainly realised the error before the AIU Interview).

131. Thus, to the Panel, in many regards, her departure from the expected standard of behaviour of an experienced athlete, whilst qualifying as not significant, is still at mid to the upper end of the spectrum.

132. As the possible scale for her period of Ineligibility is now within four (4) – six (6) years (taking into account the mathematics involved in the application of Article 10.9.1 ADR), as the Panel found above, it again finds that another one-year reduction is the maximum period of Ineligibility appropriate in the circumstances.

V) What are the appropriate consequences?

133. The Panel notes that the AIU and WA ought not be chastised for pursuing this ADRV. The system is certainly sometimes overly adversarial on its face. However, its proper functioning is contingent on all individuals who are subject to relevant ADR respecting the responsibilities they hold under these rules and the processes that arise from the same. Pursuant to Article 20.3.2 of the WADC, the AIU held a Code-compliance obligation to "*vigorously pursue*" the potential Tampering violation on behalf of WA when it received the Athlete's evidence. Rightly, the AIU proceeded with this charge in fulfilment of its responsibility under the ADR and the WADC.

134. Article 10.5 ADR provides that the applicable period of Ineligibility for a Tampering ADRV is four (4) years subject to a reduction based on an athlete's degree of Fault. Here the Panel has reduced the four (4) year period of Ineligibility to three (3) years for the reasons set out above.

135. Article 10.9.1.(a)(ii) of the 2021 ADR provides that for an Athlete's second ADRV, the period of Ineligibility shall be in the range between (aa) the sum of the period of Ineligibility imposed for the first ADRV plus the period of Ineligibility otherwise applicable to the second ADRV treated as if it were a first violation (here: 1 year + 3 years); and (bb) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation (here: 2 x 3 years), with the period of Ineligibility within this range (here thus 4 to 6 years) to be determined based on the entirety of the circumstances and the Athlete or other Person's degree of Fault with respect to the second violation.

136. The Panel assessment of the Athlete's Fault has resulted in it finding that an additional one-year reduction in sanction is warranted. As a result, the applicable period of Ineligibility shall be of five (5) years.

137. The Panel appreciates with regret that a 5-year period of Ineligibility may put an end to the Athlete's career. Yet, she is clearly a strong-willed woman and formidable athlete. She displays a strong sense of faith and spirituality and holds strong family values. Those values and that strength will hopefully guide her forward both in having a family and in returning to elite competition further to the end of her competition ban so that she may compete in one more Summer Olympic Games.

J. FINDINGS

a) Burdens and standard of proof

138. WA establishes that the Athlete has committed a Tampering ADRV to the comfortable satisfaction of the Panel, the applicable standard of proof here, pursuant to Article 3 of the 2021 ADR.

139. The evidentiary burden then falls upon the Athlete to convince the Panel that the maximum period of Ineligibility of eight (8) years prescribed by the ADR should be reduced or eliminated based on her lack of Fault; which she has succeeded in doing to a certain degree.

b) Period of Ineligibility

140. Pursuant to Article 10.9.1. (a) (ii) ADR, the Panel imposes a period of Ineligibility of five (5) years on the Athlete for the reasons set out above.

c) Start date of the period of Ineligibility

141. Pursuant to Article 10.13.1 ADR which allows for a backdating of the start of Ineligibility when there are delays in the results management process that are not attributable to the Athlete, and whilst acknowledging the comment to the same which explains that anti-doping organizations need time to *discover and develop facts sufficient to establish an anti-doping rule violation may be lengthy, particularly where the Athlete or other Person has taken affirmative action to avoid detection*, the Panel finds that beyond the AIU Interview of 14 August 2020, there was no reason for the AIU to delay the results management process or to wait to charge the Athlete with the ADRV until January 2021. No additional evidence was discovered, and no additional facts were developed by the AIU after that interview that could warrant such a substantial delay in proceeding. Therefore, the Athlete's period of Ineligibility will commence as of 15 August 2020, the day after the AIU Interview. In accordance with Article 10.13.1 ADR, all competitive results achieved by the Athlete in the period of 15 August 2020 till 13 January 2021 should be disqualified with all resulting consequences.

d) Disqualification of results

142. Pursuant to Article 10.10 ADR, as the WA DT Panel held in the WA v. Coleman case¹²:

“The AIU submitted that there should be a disqualification of the Athlete’s results from the date of the Missed Test. Rule 10.8 provides that there shall be a Disqualification from the date of the ADRV unless the Tribunal Determines that Fairness requires otherwise. We reject this. This is very different from a case where the Athlete commits an ADRV through ingesting a prohibited substance, where results after the date of the ADRV may be affected”

143. Applying the same reasoning here, the Panel finds that any results the Athlete might have earned prior to 15 August 2020 ought not be disqualified. She was not found to be using any prohibited substances at the time she committed her Tampering offence. Therefore, *because fairness requires otherwise*, there is no reason to impose greater sanction and punishment than required.

e) Costs

144. Considering the outcome of this case, the conduct and the financial resources of the parties, the nature of the ADRV in light of the facts and evidence presented, and the financial impact of the current COVID-19 pandemic on each party, the Panel finds it to be appropriate and fair that the Athlete pay a contribution of 500 USD to WA’s costs.

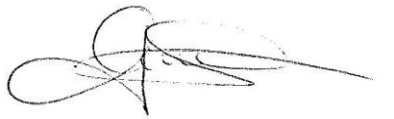
f) Publication

145. Pursuant to Article 14.3.2 ADR, the AIU shall publicly disclose this Award. At a minimum, this means that the particulars of this matter shall be placed on the AIU website (or published through other means) for the duration of the Athlete’s period of Ineligibility.

¹² SR/141/2020 at par 68

K. ORDER

146. Pursuant to Article 2.5 ADR, the Panel finds that the Athlete has committed an ADRV of Tampering.
147. Pursuant to Article 10.9.1. (a) (ii) ADR, a period of Ineligibility of five (5) years from participating in any competition/event, in all sports applies and shall start as of 15 August 2020.
148. The Athlete shall pay a contribution of 500 USD to WA's costs.
149. Pursuant to Article 13 ADR and its subsections, this decision may be appealed exclusively to the Court of Arbitration for Sport ("CAS"), located at Château de Béthusy, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland (procedures@tas-cas.org). In accordance with Art. 13.6 ADR, parties shall have 30 days from receipt of this decision to lodge an appeal with the CAS.



Janie Soublière

Chair, on behalf of the Panel

London, UK

21 April 2021

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