

## DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MR FELIX KIPTOO KIRWA

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### Introduction

1. In April 2017, the IAAF established the Athletics Integrity Unit ("**AIU**") whose role is to protect the integrity of the sport of Athletics, including fulfilling the IAAF's obligations as a Signatory to the World Anti-Doping Code. The IAAF has delegated implementation of the IAAF Anti-Doping Rules ("**ADR**") to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. Mr Felix Kiptoo KIRWA is a 23-year old Kenyan long-distance runner who is an International-Level Athlete for the purposes of the ADR (the "**Athlete**").
3. The AIU has charged the Athlete with commission of anti-doping rule violations under the ADR and has proposed certain consequences based on its analysis of the degree of fault borne by the Athlete. The Athlete has admitted the anti-doping rule violations with which he was charged and has accepted the consequences proposed.
4. This decision is accordingly issued pursuant to Article 8.4.7 ADR which provides that:

*8.4.7 "[i]n the event that [...] the Athlete or Athlete Support Person admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by the Integrity Unit, a hearing before the Disciplinary Tribunal shall not be required. In such a case, the Integrity Unit...shall promptly issue a decision confirming...the commission of the Anti-Doping Rule Violation(s) and the imposition of the Specified Consequences (including, if applicable, a justification for why the maximum potential sanction was not imposed)".*

### The Athlete's commission of Anti-Doping Rule Violations

5. On 9 December 2018, the Athlete underwent an in-competition doping control in Singapore at the conclusion of his participation in the Standard Chartered Singapore Marathon (the "**Event**"). The Athlete provided a urine sample numbered 4328511 (the "**Sample**").
6. On 4 February 2019, the WADA accredited laboratory in New Delhi reported an Adverse Analytical Finding (the "**AAF**") for the presence of Strychnine in the Sample.
7. Strychnine is a Prohibited Substance under category S6 (Stimulants) of the WADA 2018 Prohibited List. It is a specified substance prohibited in-competition.
8. The Athlete did not have a TUE permitting the use of Strychnine.
9. On 8 February 2019, the AIU notified the Athlete, via his National Federation, of the AAF and offered him the opportunity to explain the circumstances that resulted in the presence of Strychnine in the Sample.

10. The Athlete was also afforded the opportunity to request analysis of the B Sample and to accept a voluntary provisional suspension.<sup>1</sup>
11. The Athlete did not request analysis of the B Sample.
12. On 14 February 2019, the Athlete returned to the AIU a signed Acceptance of Voluntary Provisional Suspension form.
13. On the same day, the Athlete admitted the Anti-Doping Rule Violations and provided the AIU with a copy of a medical file documenting his use of herbal medicine products including 'Arthritis Care' and 'Goodcare Arthplus' to treat arthritis prior to the Event. Both products contain Strychnos nuxvomica, which contains Strychnine. Strychnine itself is not listed on either product.
14. On 15 February 2019, upon request by the AIU, the Athlete provided a detailed account of his use of the herbal medicine products in the period leading up to the Event.
15. Following consultation with a scientific expert, the AIU is satisfied that the presence of Strychnine in the Sample is consistent with the Athlete's ingestion of the herbal medicine products 'Arthritis Care' and 'Goodcare Arthplus'.

### Sanction

16. Article 10.2 ADR provides that the period of ineligibility imposed for anti-doping rule violations under Article 2.1 ADR and Article 2.2 ADR involving a specified substance shall be two years, unless the AIU can establish that the anti-doping rule violations were intentional.
17. The AIU does not seek to demonstrate that the anti-doping rule violations committed by the Athlete were intentional. The AIU is satisfied based on the Athlete's explanation and supporting medical evidence that the Athlete used the herbal medicine products for therapeutic reasons.
18. Article 10.4 ADR permits the period of ineligibility to be eliminated in cases where an Athlete is able to establish that he/she bears No Fault or Negligence.
19. The definition of No Fault or Negligence provides as follows:

*"No Fault or Negligence: The Athlete's or other Person's 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 or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must establish how the Prohibited Substance entered his system."*
20. The Athlete cannot establish that he bears No Fault or Negligence for his anti-doping rule violations because he did not exercise utmost caution to ensure that he did not use a prohibited substance.
21. However, the AIU accepts that the Athlete can rely on Article 10.5.1(a) to reduce the period of ineligibility below the mandatory two years, by sustaining a plea of No Significant Fault or Negligence, defined as follows:

*"No Significant Fault or Negligence: The Athlete's or other Person's establishing that his 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 Anti-Doping Rule Violation. Except in the case*

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<sup>1</sup> In accordance with Article 7.10.2 ADR.

*of a Minor, for any violation of Article 2.1, the Athlete must establish how the Prohibited Substance entered his system.”*

22. The AIU is satisfied that the Athlete has demonstrated how Strychnine entered his system (see paragraph 15 supra).
23. The AIU is also satisfied that the Athlete's Fault or Negligence in his particular circumstances was not significant because:
  - 23.1. at the material time, the Athlete was 23 years old and whereas the Athlete is an International-Level Athlete for the purposes of the ADR, he is not an experienced, educated Athlete<sup>2</sup>; and
  - 23.2. a search of the ingredients given on the product label of the herbal medicine (Sudh Kuchla / Strychnos nuxvomica) against the WADA 2018 Prohibited List would not have identified a prohibited substance.
24. In light of the above, including the Athlete's relative age, inexperience and that the prohibited substance did not expressly appear on the herbal medicine product labels, the AIU proposed to the Athlete on 17 May 2019 a period of Ineligibility in this case of nine (9) months.
25. On 18 May 2019, the Athlete signed and returned to the AIU an Admission of Anti-Doping Rule Violation and Acceptance of Sanction Form and accepted that proposal.

### **Consequences**

26. This constitutes the Athlete's first Anti-Doping Rule Violation under the ADR.
27. On the basis that the Athlete has admitted to committing anti-doping rule violations under Article 2.1 ADR and Article 2.2 ADR, the AIU confirms by this decision the following consequences for a first anti-doping rule violation:
  - 27.1. a period of Ineligibility of nine (9) months pursuant to Article 10.2.2 ADR and Article 10.5.1(a) ADR commencing on 14 February 2019<sup>3</sup>; and
  - 27.2. disqualification of the Athlete's results from 9 December 2018 to 14 February 2019 with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money, pursuant to Article 9 ADR.
28. The Athlete's status during the period of ineligibility is set out in Article 10.11 ADR as follows:

*"10.11.1 Prohibition Against Participation During Ineligibility*

*(a) No Athlete or other Person who has been declared ineligible may, during the period of ineligibility, compete or otherwise participate in any capacity in (or if the Athlete is an Athlete Support Person, assist any Athlete competing or otherwise participating in any capacity in):*

*(i) any International Competition;*

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<sup>2</sup> The Athlete participated in two international marathons in each of 2015, 2016 and 2017 and only one (the Event) in 2018.

<sup>3</sup> In accordance with Article 10.10.2(a) ADR, the period of provisional suspension served by the Athlete since 14 February 2019 shall be credited against the total period of ineligibility to be served.

- (ii) *any other Competition or Event or activity (other than authorised anti-doping education or rehabilitation programmes) authorised, organised, or sanctioned by the IAAF, any National Association or member of a National Association, or any Area Association, or any Signatory, Signatory's member organisation, or club or member organisation of that Signatory's member organisation;*
  - (iii) *any Event or Competition authorised or organised by any professional league or any international or national-level Event or Competition organisation; or*
  - (iv) *any elite or national-level sporting activity funded by a governmental agency".*
29. The Athlete has accepted the above consequences for his anti-doping rule violations and has expressly waived his right to have those consequences determined by the Disciplinary Tribunal at a hearing.

### **Publication**

30. In accordance with Article 8.4.7(b) ADR, the AIU shall publicly report this decision on the AIU's website.

### **Rights of Appeal**

31. This decision constitutes the final decision of the AIU pursuant to Article 8.4.7 ADR.
32. Further to Article 13.2.4 ADR, WADA and the Anti-Doping Agency of Kenya ("**ADAK**") have a right of appeal against this decision to the Court of Arbitration for Sport in Lausanne, Switzerland, in accordance with the procedure set out at Article 13.7.2 ADR.
33. If an appeal is filed against this decision by WADA or ADAK, the Athlete will be entitled to exercise his right of cross-appeal in accordance with Article 13.9.3 ADR.

**Monaco, 11 June 2019**