

## DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MS KATERYNA TABASHNYK

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### Introduction

1. In April 2017, World Athletics (formerly the IAAF) established the Athletics Integrity Unit ("**AIU**") whose role is to protect the integrity of the sport of Athletics, including fulfilling World Athletics' obligations as a Signatory to the World Anti-Doping Code. World Athletics has delegated implementation of the World Athletics Anti-Doping Rules ("**ADR**") to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. Ms. Kateryna Tabashnyk is a 26-year old Ukrainian high jumper who is an International-Level Athlete for the purposes of the ADR (the "**Athlete**").
3. This decision is 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 an Anti-Doping Rule Violation

4. On 28 March 2019, the Athlete provided a urine Sample Out-of-Competition in Antalya (Turkey), which was given code 4338097 (the "**Sample**").
5. On 12 April 2019, the WADA accredited laboratory in Lausanne, Switzerland reported an Adverse Analytical Finding (the "**AAF**") for the presence of Hydrochlorothiazide in the Sample.
6. Hydrochlorothiazide is a Prohibited Substance under the WADA 2019 Prohibited List under the category *S5. Diuretics and Masking Agents*. It is a specified substance prohibited at all times.
7. The Athlete did not have a Therapeutic Use Exemption ("**TUE**") permitting the use of Terbutaline.
8. On 8 May 2019, the AIU notified the Athlete of the AAF and requested her explanation for the presence of Hydrochlorothiazide in the Sample.
9. On 15 May 2019 and 26 May 2019, the Athlete provided her explanation to the AIU. The Athlete set out that, as early as 19 March 2019, she had sought medical treatment from the Ukraine team doctor at a training camp in Turkey for symptoms including headache, chills and nausea. She was diagnosed with heat stroke and treated by the team doctor with a drip, paracetamol and an intramuscular injection between 19 March 2019 and 21 March 2019.

10. On 22 March 2019, her condition had not improved and therefore she attended a clinic in Turkey, which made a presumptive diagnosis of acute pharyngitis and prescribed further medicinal treatment, including an IV for paracetamol. Overnight on 22 March 2019, the Athlete experienced a rash and fluctuations in temperature.
11. Therefore, on 23 March 2019, the Athlete visited a different medical facility in Turkey and was diagnosed with mononucleosis for which she was provided with additional medication. Thereafter, her condition stabilized. However, approximately 48 hours later, in the early hours of 26 March 2019, the Athlete asserts that she experienced a severe headache and shortness of breath and so again visited the team doctor.
12. The Athlete's blood pressure was analysed and was 125/85mm/Hg. The Athlete advised the team doctor that this reading was above her normal levels. The Athlete was given several medications by the team doctor to treat her symptoms. Later that day, on 26 March 2019, the team doctor left Turkey to return to the Ukraine. However, the Athlete's symptoms persisted.
13. The Athlete therefore advised her coach of her symptoms and the coach went to a local pharmacy in Turkey and purchased additional medicine (beyond those provided by the team doctor to treat the Athlete's symptoms), specifically, Micardis Plus<sup>1</sup>.
14. The Athlete took one (1) tablet of Micardis Plus on 26 March 2019 and another tablet on 27 March 2019. She did not check herself, or with the team doctor who had previously assessed her symptoms (or with any other medically qualified person), the product label or packaging of the Micardis Plus before using it.
15. The Athlete admitted the Anti-Doping Rule Violation (i.e., the presence of Hydrochlorothiazide in her sample), but asserted that she had No Fault or Negligence or at least No Significant Fault or Negligence and requested that a sanction in the range of a reprimand up to a maximum period of ineligibility of one (1) year should be imposed.

## Consequences

16. This is the Athlete's first anti-doping rule violation.
17. Hydrochlorothiazide is a Prohibited Substance under the WADA 2019 Prohibited List under the category *S5. Diuretics and Masking Agents*. It is a specified substance prohibited at all times.
18. Article 10.2.1 ADR provides that the period of ineligibility to be imposed for the presence of a prohibited substance in an Athlete's sample shall be determined as follows:

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

*10.2.1 The period of ineligibility shall be four years where:*

- (a) *The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person establishes that the Anti-Doping Rule Violation was not intentional.*

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<sup>1</sup> Micardis Plus is a medication used to treat hypertension, <https://www.nps.org.au/medicine-finder/micardis-plus-40-12-5-mg-tablets> and its active ingredient is Hydrochlorothiazide.

- (b) *The Anti-Doping Rule Violation involves a Specified Substance and the Integrity Unit establishes that the Anti-Doping Rule Violation was intentional.*

10.2.2 *If Article 10.2.1 does not apply, the period of ineligibility shall be two years.*

10.2.3 *As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term therefore requires that the Athlete or other Person engaged in conduct that he knew constituted an Anti-Doping Rule Violation or knew that there was significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition (a) shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that it was Used Out-of-Competition; and (b) shall not be considered "intentional" if the Substance is not a Specified Substance and the Athlete can establish that it was Used Out-of-Competition in a context unrelated to sport performance.*

19. Hydrochlorothiazide is classified as a 'Specified Substance' i.e., as a substance that is more likely to have been consumed for a purpose other than enhancement of sport performance. Article 10.2.1 ADR specifies that a violation for such a substance carries a 4-year ban if the AIU is able to prove that the violation was "intentional". Article 10.2.3 ADR explains that, in the context, the term "intentional" is meant to identify those who cheat. The term therefore requires that the Athlete engaged in conduct that he/she knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk. The jurisprudence is clear that what counts in this context is what the Athlete actually knew, not what he/she should have known.
20. Given the facts set out above, the AIU does not have any basis to contend that the violation was 'intentional' within the meaning of Article 10.2.3 ADR.
21. The mandatory period of ineligibility to be imposed in the Athlete's case is therefore two (2) years, subject to a potential reduction in sanction pursuant to Article 10.4 ADR (No Fault or Negligence) or Article 10.5 ADR (No Significant Fault or Negligence) based upon the Athlete's level of Fault.<sup>2</sup>
22. It is a precondition of any mitigation of sanction for an Article 2.1 ADR violation based on No (or No Significant) Fault or Negligence that the Athlete must be able to establish (on the balance of probabilities) how the prohibited substance entered his/her system.

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<sup>2</sup> **Fault:** Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to taken into consideration in assessing an Athlete 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 Minor, 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 behavior. 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 his career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.

23. As described above, the Athlete's explanation is that Hydrochlorothiazide entered her system through the ingestion of the Micardis Plus medication on 26 March 2019 and 27 March 2019. The AIU accepts the Athlete's explanation.

### Mitigation of Sanction

24. To sustain a plea of No Fault or Negligence (Article 10.4 ADR), the Athlete must show that she did not depart from the duty imposed on her under the ADR to use 'utmost caution' to ensure that no prohibited substance entered her body. Alternatively, to sustain a plea of No Significant Fault or Negligence, (Article 10.5 ADR), she must show that her departure from the strict standard of care was not significant (objective analysis) and/or that there are legitimate reasons why she failed to take all the steps required (subjective analysis) such that her overall fault should not be regarded as significant.
25. A finding of No Fault or Negligence eliminates the period of ineligibility completely (Article 10.4 ADR) and a finding of No Significant Fault or Negligence triggers a discretion under Article 10.5.1(a) to impose a sanction between a reprimand and a two-year period of ineligibility, depending on the degree of Fault borne by the Athlete. The decision of the Court of Arbitration for Sport ("CAS") in CAS 2013/A/3327 *Marin Cilic v. ITF*<sup>3</sup> provides helpful guidance on where an Athlete's fault lies within that range. An Athlete's 'objective fault' is first assessed to determine into which category his fault falls – 'light' (0-8 months); 'normal' (8-16 months); or 'considerable' (16-24 months) – and then his 'subjective' fault is assessed to move him up or down within that category (or into a different category).
26. In assessing the 'objective' fault, the CAS Panel in *Cilic* stated<sup>4</sup> that, in ordinary circumstances (including when using in-competition a product that is banned in-competition), Athletes should (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label against the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure that the product is reliably sourced, and (v) consult appropriate experts in such matters and instruct them diligently before consuming the product.
27. Applying the above to the facts of the Athlete's case:
- i. The AIU notes that Micardis Plus is a medication used to treat hypertension and that this was not diagnosed by any of the medical personnel that the Athlete visited in Turkey, including the team doctor.
  - ii. The statement of the team doctor confirms that it was the Athlete's self-diagnosis of problems with her blood pressure based on her own assertion that her blood pressure results were "not normal".
  - iii. The Athlete did not act expressly on the advice or prescription of a doctor in purchasing or ingesting the product that contains the prohibited substance. By ingesting Micardis Plus in order to treat hypertension, the Athlete was effectively self-diagnosed and self-medicated, effectively ignoring the qualified medical diagnoses and advice of several doctors.
  - iv. The Athlete failed to demonstrate that the Micardis Plus tablets were reliably sourced; there is no evidence of the purchase of the tablets from a local pharmacy by the Athlete's coach as alleged and/or that the Athlete consulted appropriately qualified or experienced experts.

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<sup>3</sup> See CAS 2013/A/3327 *Marin Cilic v. ITF* and CAS 2013/A/3335 *ITF v. Marin Cilic*.

<sup>4</sup> See paragraphs 74-75 of the CAS award.

- v. The Athlete admitted that she did not read the label of the tablets and has provided no evidence that she checked the ingredients on the product label against the list of prohibited substances. The Athlete asserted that the information about the Micardis Plus tablets was in Turkish such that she could not determine the composition of the tablets by checking the packaging. However, the AIU notes that pictures of the blister packaging for the Micardis Plus tablets provided by the Athlete clearly show that the active ingredient identified on the packaging as “Hidroklorotiyazid” written in English characters.
  - vi. The Athlete failed to conduct any internet search of the product.
28. It is therefore clear on the facts that the Athlete cannot establish that she bears No Fault or Negligence and the AIU considers that that her objective level of fault is significant, i.e., in the 'considerable' category by reference to the *Cilic* scale.
29. The Athlete is a highly experienced International-Level Athlete.<sup>5</sup> However, she asserts that her symptoms on 26 March 2019 (constant pain and pulsating temporal region, aching eyes and shortness of breath) were so severe that she had no alternative option (given the recent departure of the team doctor) but to source emergency local medication.
30. The AIU considers that the Athlete’s state of distress, whilst of no impact on her objective level of Fault being significant in this case, does constitute a subjective factor that can be taken into account when determining the Consequences to be imposed.
31. In considering the specific facts of this case, the AIU has determined the Athlete’s subjective level of Fault to be at the low to middle end of the significant/considerable degree of Fault and therefore that the period of ineligibility should be set slightly below the “normal” degree of 20 months.<sup>6</sup>
32. In light of the above, the AIU considers that a 19-month period of ineligibility is appropriate in the Athlete’s case and the Athlete has accepted the sanction.
33. Given the Athlete’s timely admission of the violation after being confronted by the AIU, there is discretion under Article 10.10.2(b) ADR to back-date the commencement of the period of ineligibility to the date of sample collection. The AIU agrees to exercise its discretion in the Athlete’s case such that the period of ineligibility should run for 19 months from the date of sample collection on 28 March 2019, i.e., until 27 October 2020.
34. The Athlete's results on and since 28 March 2019 are disqualified pursuant to Article 9 and Article 10.8 ADR, with all resulting consequences, including forfeiture of any titles, medals, points and prize and appearance money.

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<sup>5</sup> The Athlete has competed worldwide and in some of the highest profile competitions in the IAAF Calendar including the IAAF Diamond League and the European Championships (see <https://www.iaaf.org/athletes/ukraine/kateryna-tabashnyk-262348>).

<sup>6</sup> In a case of significant or considerable degree of Fault, the “standard” normal degree of fault leads to a suspension of 20 months – see *Cilic* para 70.a.

### **Decision**

35. 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:
  - 35.1. a period of ineligibility of 19 months pursuant to Article 10.2.2 and 10.5.1(a), commencing on 28 March 2019; and
  - 35.2. disqualification of the Athlete's results on and since 28 March 2019 with all resulting consequences, including forfeiture of any titles, medals, points and prize and appearance money pursuant to Article 9 and 10.8 ADR.
36. The Athlete has accepted the above consequences for her Anti-Doping Rule Violations and has expressly waived her right to have those consequences determined by the Disciplinary Tribunal at a hearing.

### **Publication**

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

### **Rights of Appeal**

38. This decision constitutes the final decision of the AIU pursuant to Article 8.4.7 ADR.
39. Further to Article 13.2.4 ADR, WADA and the National Anti-Doping Organization of Ukraine 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.
40. If an appeal is filed against this decision by WADA or the National Anti-Doping Organization of Ukraine, the Athlete will be entitled to exercise his right of cross-appeal in accordance with Article 13.9.3 ADR.

**Monaco, 13 January 2020**