

DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MS DIANA CHEMTAI KIPYOKEI

INTRODUCTION

1. World Athletics has established the Athletics Integrity Unit ("**AIU**") whose role is to protect the integrity of the sport of Athletics, including fulfilling World Athletics' obligations as a Signatory to the World Anti-Doping Code ("the "**Code**"). World Athletics has delegated implementation of the World Athletics Anti-Doping Rules ("**ADR**") to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. Ms Diana Chemtai Kipyokei ("the **Athlete**") is a 28-year-old road runner from Kenya¹.
3. This decision is issued by the AIU pursuant to Rule 8.5.6 ADR, which provides as follows:

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

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

THE ATHLETE'S COMMISSION OF ANTI-DOPING RULE VIOLATIONS

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

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

[...]

*2.5 Tampering or Attempted Tampering with any part of Doping Control by an Athlete or other Person"*²

¹ <https://www.worldathletics.org/athletes/kenya/diana-chemtai-kiyokei-14746169>

² Tampering is defined in the ADR as follows: *"Intentional conduct that 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 Organisation or TUE committee or hearing panel, procuring false testimony from witnesses, committing any other fraudulent act upon the Anti-Doping Organisation or hearing body to affect*

5. On 11 October 2021, the Athlete provided a urine Sample In-Competition at the ‘B.A.A. Boston Marathon’ held in Boston, USA, which was given code 158744V (the “Sample”).
6. On 4 November 2021, the World Anti-Doping Agency (“WADA”) accredited laboratory in Los Angeles, USA (the “Laboratory”) reported an Adverse Analytical Finding in the Sample based on the presence of a metabolite of Triamcinolone acetonide³ (the “Adverse Analytical Finding”).
7. Triamcinolone acetonide is a Prohibited Substance under the WADA 2021 Prohibited List under the category S9: Glucocorticoids. It is a Specified Substance prohibited In-Competition when administered by oral, intravenous, intramuscular or rectal route⁴.
8. On 8 November 2021, the AIU wrote to the Athlete to request her preliminary explanation for the Adverse Analytical Finding, in particular, to determine whether triamcinolone acetonide may have been administered via a permitted route as part of its initial review of the Adverse Analytical Finding conducted pursuant to Article 5 of the International Standard for Results Management (“ISRM”).
9. On 17 November 2021, the Athlete responded to the AIU via her Authorised Athlete Representative (the “Representative”) explaining that:
 - 9.1. following a 32km training run on 24 September 2021, she began to feel pain in her left Achilles tendon;
 - 9.2. the pain was similar to that which she experienced with an injury to her other Achilles tendon in advance of the Prague marathon earlier in 2021, which she was ultimately not able to finish due to that injury;
 - 9.3. she was therefore concerned that the pain in her left Achilles tendon might affect her participation in the Boston marathon on 11 October 2021 and ‘panicked’;
 - 9.4. she did not inform the Representative about the pain she experienced in her left Achilles tendon on 24 September 2021 because she feared the Representative would withdraw her from the Boston marathon competition;
 - 9.5. on 27 September 2021, she therefore visited a doctor (Dr David Njenga) at a chemist/pharmacy in Eldoret, Kenya who did not examine her, but touched her foot and told her that the injury, although not serious, needed treatment and that she needed ‘2 tendon injections of cortisone’;

Results Management or the imposition of Consequences, and any other similar intentional interference or Attempted interference with any aspect of Doping Control.”

³ Namely, 6B-hydroxytriamcinolone acetonide.

⁴ Since 2022, glucocorticoids are prohibited when administered by any injectable, oral [including oromucosal (e.g. buccal, gingival, sublingual)] or rectal route.

- 9.6. she told Dr Njenga that she was a professional Athlete and he told her *'there was no problem'* and, although she was unsure, she received an injection on 27 September 2021 and then a further injection on or after 28 September 2021; and
- 9.7. she had no documents to confirm the asserted injections that were administered to her.
10. On 18 November 2021, the AIU wrote to the Athlete confirming that her explanation was insufficient to explain the presence of a metabolite of triamcinolone acetonide in the Sample because it referred to cortisone, a different Prohibited Substance.
11. The Athlete was given until 25 November 2021 to submit an explanation for the presence of the metabolite of triamcinolone acetonide in the Sample and was reminded that (i) it was a substance prohibited In-Competition when administered by a non-permitted route and (ii) to provide any corroborative evidence in support of any explanation.
12. On the same date, the Representative responded to the AIU confirming that (i) the Athlete's explanation had referred to cortisone because Dr Njenga had told her that she would be injected with *'a cortisone'*, (ii) the Athlete had spoken with Dr Njenga following receipt of the AIU email dated 18 November 2021 and he had confirmed that she had been injected with triamcinolone acetonide; and (iii) she had tried to further contact Dr Njenga on 18 November 2021 but *'it seems his phone number is switched off'*.
13. The AIU responded to confirm its position that the Athlete's explanation remained insufficient to establish the origin of the metabolite of triamcinolone acetonide in the Sample and that she should provide corroborating evidence to do so (should it exist).
14. On 25 November 2021, the Representative requested on the Athlete's behalf (and was granted) an extension to respond until 29 November 2021.
15. On 29 November 2021, the Representative provided additional information to the AIU on the Athlete's behalf, in summary, as follows⁵:
- 15.1. the Representative had met with the Athlete in Kenya on 18 November 2021 to discuss this matter and the Athlete confirmed the explanation that she had previously provided⁶;
- 15.2. Dr Njenga was initially available to issue a statement to explain the circumstances of the treatment, but he later became unavailable to provide any further information because *'he did not want to be involved'* in the matter.
16. The Representative enclosed medical documents from the Uasin Gishu County Hospital ("**the Hospital**"), which were given to him by the Athlete *"referring to visits and related therapies*

⁵ The Representative also indicated that the Athlete's friends/relatives had been trying to help her to produce documents which looked fake, and which were not from the doctor that treated her.

⁶ It was also clarified that the name of the Chemist/Pharmacy in Eldoret where the Athlete was treated by Dr Njenga was called 'Roybey Chemists'.

that she had at the Uasin Gishu County Hospital based in Eldoret after Prague Marathon in June till August” (“the **Medical Documents**”) and which included:

- 16.1. two (2) pages of clinical notes on a document titled “Patient treatment card” from the Hospital signed by Dr Mark Korir specifying three (3) visits by the Athlete on 5 June 2021, 14 July 2021 and 3 August 2021 and that she had been given an intramuscular injection of triamcinolone on 3 August 2021 to treat tendonitis; and
 - 16.2. an “Attendance Card” from the Hospital dated 5 June 2021 recording three separate visits on 5 June 2021, 14 July 2021 and 3 August 2021 respectively.
17. The AIU concluded that the Athlete’s explanations and the Medical Documents (as set out above) failed to demonstrate that triamcinolone had been administered via a permitted route. The AIU also remained satisfied that there was no departure from the WADA International Standard for Testing and Investigations (“**ISTI**”) or International Standard for Laboratories (“**ISL**”) that could reasonably have caused the Adverse Analytical Finding.
18. Therefore, on 7 December 2021, the AIU issued the Athlete with a Notice of Allegation of Anti-Doping Rule Violations, which asserted potential Anti-Doping Rule Violations pursuant to Rule 2.1 ADR and/or Rule 2.2 ADR based on the Adverse Analytical Finding, notified her that a Provisional Suspension may be imposed in her case (and afforded her the opportunity to make a written submission showing why a Provisional Suspension should not be imposed) and invited her to confirm how she wished to proceed with the matter.
19. On 17 December 2021, the Athlete informed the AIU that she wanted to discuss an admission to the Anti-Doping Rule Violations “*without knowledge of the substance used*”.
20. Therefore, on 8 February 2022, the Athlete was interviewed by representatives of the AIU in Kenya. In summary, the Athlete confirmed in this interview that she:
- 20.1. encountered an unknown female on her way home from training who had seen her walking with an injury and asked her what the problem was. The Athlete explained that she had pain in her leg and the unknown female explained that she knew Dr Njenga and referred the Athlete to him;
 - 20.2. visited Dr Njenga on 24 September 2021 in his practice/office located on the 2nd floor of a building (Bargetuny Plaza) above a pharmacy/chemist. This first meeting was a consultation meeting during which the Athlete disclosed her symptoms to Dr Njenga and told him that she was an athlete and he promised to help her;
 - 20.3. was injected twice by Dr Njenga in his practice/office, once on 27 September 2021 into her tendon area, and a second time on 28 September 2021 into her left buttock, and had paid him 10,000 KSch in cash for this treatment;
 - 20.4. was not told what was in those injections and that they were the only injections that she received from Dr Njenga;
 - 20.5. sought details of the treatment that Dr Njenga had previously given her on 18 November 2021. The first document that Dr Njenga produced was not sufficient because it did not include his name, phone number, signature etc and so the Athlete

was instructed (by an agent of the Representative) to obtain sufficient documentation from Dr Njenga. Dr Njenga asked her to pay 20,000 KSch, which she paid to him electronically via MPESA on 23 November 2021 and a second document was produced for the Athlete. The agent of the Representative informed the Athlete that the medicines referred to in the second document did not match those that had been detected in the Sample and the Athlete was sent again to Dr Njenga. A third set of documents that the Athlete obtained from Dr Njenga (i.e., the Medical Documents submitted by the Representative on the Athlete's behalf to the AIU on 29 November 2021) referred to a different doctor.

21. On 29 March 2022, the AIU requested the assistance of the Anti-Doping Agency of Kenya ("**ADAK**") to determine the veracity and authenticity of the Medical Documents submitted by the Athlete via the Representative that referred to apparent medical treatment at the Hospital in June 2021, July 2021 and August 2021.
22. On 14 April 2022, ADAK forwarded the Hospital's formal response to the AIU, which confirmed that:
 - 22.1. the Athlete did not visit the Hospital on 5 June, 14 July or 3 August 2021;
 - 22.2. the intramuscular triamcinolone injection referred to on 3 August 2021 was not administered at the Hospital;
 - 22.3. the Medical Documents submitted to the AIU were not issued by the Hospital; and
 - 22.4. the AIU should treat the Medical Documents as falsified or not authentic.
23. On 27 June 2022, representatives of the AIU interviewed the Athlete in Kenya (pursuant to a Demand issued on 22 June 2022), particularly in relation to the Hospital's formal response that the Medical Documents should be treated as falsified or not authentic.
24. The AIU also issued a Notice of Provisional Suspension to the Athlete following exercise of its discretion to impose a Provisional Suspension pursuant to Rule 7.4.2 ADR effective as of that date.
25. In summary, the Athlete stated in interview on 27 June 2022 that:
 - 25.1. she had asked Dr Njenga to prepare the Medical Documents that were submitted to the AIU on 29 November 2021, and paid him 20,000 KSch for them;
 - 25.2. the information in the Medical Documents purporting to be from the Hospital was untrue; and
 - 25.3. she knew that the Medical Documents submitted to the AIU were fake but had accepted them because they had been prepared by Dr Njenga, so she believed that they would be acceptable to the AIU.
26. The AIU therefore concluded that the Athlete had (i) provided false/misleading information to the AIU in the context of Rule 5.7.9 ADR and (ii) that the Medical Documents submitted to the AIU to support her explanation for the Adverse Analytical Finding on 29 November 2021 were

forged/falsified documents, constituting a further violation of Tampering in accordance with Rule 2.5.

27. Therefore, on 14 October 2022, the AIU issued the Athlete with a Notice of Charge in accordance with Rule 8.5.1 ADR and Article 7.1 ISRM confirming that she was being charged with Anti-Doping Rule Violations under Rule 2.1 ADR and Rule 2.5 ADR (“**the Charge**”) and that those Anti-Doping Rule Violations warranted a total period of Ineligibility of six (6) years pursuant to Rules 10.9.3(a) ADR (i.e., for the violation that carries the more severe sanction viz. Rule 2.5 (Tampering)) and the application of Rule 10.4 ADR (Aggravating Circumstances that may increase the period of Ineligibility)⁷.
28. The AIU invited the Athlete to respond to the Charge confirming how she wished to proceed by no later than 28 October 2022. The letter confirmed that, should the Athlete fail to challenge the AIU’s assertion of the Anti-Doping Rule Violations or the Consequences, or fail to request a hearing by 28 October 2022, then she would be deemed to have waived her right to a hearing, admitted the Anti-Doping Rule Violations and accepted the Consequences set out in the Charge.
29. On 21 October 2022, the AIU reminded the Athlete of her deadline of 28 October 2022 to respond to the Notice of Charge via email and WhatsApp.
30. The Athlete confirmed receipt of the Charge via WhatsApp on 21 October 2022, however, she failed to respond by the deadline of 28 October 2022.
31. Therefore, on 3 November 2022, the AIU wrote to the Athlete confirming that, due to her failure to respond to the Charge by 28 October 2022, she was deemed to have (i) waived her right to a hearing, (ii) admitted the Anti-Doping Rule Violations and (iii) accepted the Consequences set out in the Charge. The AIU reminded the Athlete that 3 November 2022 also constituted the last day by which the Athlete could sign and return an Admission of Anti-Doping Rule Violations and Acceptance of Consequences form (that was enclosed with the Charge) to benefit from an automatic one (1) year reduction in the period of Ineligibility pursuant to Rule 10.8.1 ADR.
32. On the same day, the Athlete wrote to the AIU stating that she was “*not going to change anything*”.
33. The Athlete failed to submit a signed Admission of Anti-Doping Rule Violations and Acceptance of Consequences form to the AIU by 3 November 2022.

CONSEQUENCES

34. Whereas this matter concerns multiple Anti-Doping Rule Violations by the Athlete, those Anti-Doping Rule Violations fall to be considered together as one single first Anti-Doping Rule

⁷ The AIU explained in the Notice of Charge that, based on the evidence, it was satisfied that the Athlete had committed multiple anti-doping rule violations.

Violation⁸ in accordance with Rule 10.9.3(a) ADR and the sanction imposed shall be based on the violation that carries the more severe sanction:

“10.9.3 Additional rules for certain potential multiple violations

- (a) *For purposes of imposing sanctions under Rule 10.9, except as provided in Rules 10.9.3(b) and 10.9.3(c), an anti-doping rule violation will only be considered a second (or third, as applicable) violation if the Integrity Unit can establish that the Athlete or other Person committed the additional anti-doping rule violation after the Athlete or other Person received notice pursuant to Rule 7, or after the Integrity Unit made reasonable efforts to give notice, of the first anti-doping rule violation. If the Integrity Unit cannot establish this, the violations will be considered together as one single first violation, and the sanction imposed will be based on the violation that carries the more severe sanction, including the application of Aggravating Circumstances. Results in all Competitions dating back to the earlier anti-doping rule violation will be Disqualified as provided in Rule 10.10.*

[...].”

(emphasis added)

35. Rule 10.2 ADR specifies that the period of Ineligibility for an Anti-Doping Rule Violation under Rule 2.1 ADR (Presence) shall be as follows:

“10.2.1 Save where Rule 10.2.4 applies, the period of Ineligibility will be four years where:

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

36. Triamcinolone acetonide is a Specified Substance under the WADA 2021 Prohibited List. The mandatory period of Ineligibility to be imposed for the Anti-Doping Rule Violation committed pursuant to Rule 2.1 is therefore a period of two (2) years, unless the AIU can demonstrate that the Rule 2.1 Anti-Doping Rule Violation was intentional.

37. Rule 10.3.1 ADR specifies that the period of Ineligibility for an Anti-Doping Rule Violation under Rule 2.5 ADR (Tampering) shall be as follows:

“10.3.1 For violations of Rule 2.3 or Rule 2.5, the period of Ineligibility will 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 will be two (2) years; (ii) in all other cases, if the Athlete or other Person can establish exceptional circumstances that justify a reduction of the period of Ineligibility, the period of Ineligibility will be

⁸The Medical Documents that form the basis of the Tampering violation were submitted to the AIU on 29 November 2021, before the Athlete received formal notice of the Adverse Analytical Finding pursuant to Rule 7 ADR (i.e., the Notice of Allegation dated 7 December 2021).

in a range from two (2) years to four (4) years depending on the Athlete's or other Person's degree of Fault; or (iii) in a case involving a Protected Person or Recreational Athlete, the period of Ineligibility will be in a range between a maximum of two (2) years and, at a minimum, a reprimand and no period of Ineligibility, depending on the Protected Person or Recreational Athlete's degree of Fault."

(emphasis added)

38. The Athlete has not established that any exceptional circumstances exist to justify any reduction in the period of Ineligibility of four (4) years to be imposed for the Anti-Doping Rule Violation committed pursuant to Rule 2.5 ADR.
39. In the present case, the violation that carries the more severe sanction is therefore Tampering under Rule 2.5 ADR, pursuant to Rule 10.3.1 ADR.
40. Furthermore, Rule 10.4 ADR specifies that, where Aggravating Circumstances are present, then the otherwise applicable period of Ineligibility may be increased by a period of up to two (2) years depending on the seriousness of the violation(s) and the nature of the Aggravating Circumstances present, unless the Athlete establishes that she did not knowingly commit the Anti-Doping Rule Violations:

"10.4 Aggravating Circumstances that may increase the period of Ineligibility

If the Integrity Unit or other prosecuting authority establishes in an individual case involving an anti-doping rule violation other than violations under Rule 2.7 (Trafficking or Attempted Trafficking), Rule 2.8 (Administration or Attempted Administration), Rule 2.9 (Complicity or Attempted Complicity) or Rule 2.11 (Acts by an Athlete or other Person to discourage or retaliate against reporting) that Aggravating Circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable will be increased by an additional period of Ineligibility of up to two (2) years depending on the seriousness of the violation and the nature of the Aggravating Circumstances, unless the Athlete or other Person can establish that they did not knowingly commit the anti-doping rule violation."

41. The definition of Aggravating Circumstances in the Rules sets out (without limitation) circumstances that may justify an increase in the period of Ineligibility as follows (emphasis added):

"Aggravating Circumstances: Circumstances involving, or actions by, an Athlete or other Person that may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions include, but are not limited to: the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Athlete or other Person engaged in Tampering during Results Management. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility"

42. The Athlete has committed multiple Anti-Doping Rule Violations (i.e., Presence of a Prohibited Substance and Tampering) and the nature of the Athlete's violations (in particular, the Tampering violation) are particularly egregious.
43. The AIU therefore considers that Aggravating Circumstances are clearly present in this case and concludes that the otherwise applicable period of Ineligibility of four (4) years shall be increased by an additional period of Ineligibility of two (2) years, based on the combination of the seriousness of the Athlete's violations and the nature of the Aggravating Circumstances present.
44. On the basis that the Athlete is deemed to have admitted the Anti-Doping Rule Violations under Rule 2.1 ADR and Rule 2.5 ADR and in accordance with Rule 10.2.1 ADR Rule 10.3.1 ADR, Rule 10.4 ADR, Rule 9 ADR and Rule 10.10 ADR, the AIU confirms by this decision the following Consequences for a first Anti-Doping Rule Violation:
 - 44.1. a period of Ineligibility of six (6) years commencing on 27 June 2022 (the date of Provisional Suspension); and
 - 44.2. disqualification of the Athlete's results since and including 11 October 2021, with all resulting Consequences, including the forfeiture of any titles, awards, medals, points prizes and appearance money.

PUBLICATION

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

RIGHTS OF APPEAL

46. This decision constitutes the final decision of the AIU pursuant to Rule 8.5.6 ADR.
47. Further to Rule 13.2.3 ADR, the Athlete, WADA and 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 Rule 13.6.1 ADR.
48. If an appeal is filed against this decision by WADA or ADAK, the Athlete will be entitled to exercise her right of cross-appeal in accordance with Rule 13.2.4 ADR.

Monaco, 19 December 2022