

## **INTERNATIONAL RUGBY BOARD**

IN THE MATTER OF REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **KOLYSHKIN VADYM (UKRAINE)** CONTRARY TO REGULATION 21

BEFORE A BOARD JUDICIAL COMMITTEE APPOINTED PURSUANT TO REGULATION 21.20 and 21.21 CONSISTING OF:

Judicial Committee:

**Gregor Nicholson** (Scotland)

**Barry O’Driscoll** (Ireland)

**Graeme Mew** (Canada – Chair)

Appearances and Attendances:

Lily Orlovska (Translation Assistant)

Ilaria Baudo (Administration Assistant, International Rugby Board)

For the Board:

Tim Ricketts (Anti-Doping Manager)

Susan Ahern (Counsel)

For the Player

Kolyshkin Vadym (the Player)

Yevgen Mayevsky (General Secretary – National Rugby Federation of Ukraine)

Oleksiy Tsybko (President - National Rugby Federation of Ukraine)

Krivo Postov (President – Legion Rugby Club, Kharkiv)

### **DECISION OF THE JUDICIAL COMMITTEE**

1. The International Rugby Board (the “Board”) alleges that the Player, Kolyshkin Vadym, a member of the Ukraine men’s team, committed a Doping Offence, contrary to Regulation 21 of the Regulations Relating to the Game (the “Regulations”) when a urine sample provided in the course of a doping control test taken at the European Nations Cup match between Romania and Ukraine in Bucuresti, Romania, on 18 March 2005, was found to have contained a Prohibited Substance, 11-nor-delta 9-tetrahydrocannabinol-9-carboxylic acid (Cannabinoids) at a concentration of higher than 15ng/ml.

2. The Board has no record of a Therapeutic Use Exemption (“TUE”) on file for the Player for the use of this substance.
3. The Declaration of Medication on the Doping Control Form completed by the player as part of the testing protocol was left blank.
4. The Player’s urine specimen was divided into “A” and “B” samples and sent to the World Anti-Doping Agency (“WADA”) accredited laboratory at the Institut Municipal d’Investigació Mèdica in Barcelona, Spain. The laboratory subsequently provided the Board with an analytical report dated 18 April 2005 indicating an adverse analytical finding from testing of the Player’s “A” sample for 11-nor-delta 9-tetrahydrocannabinol-9-carboxylic acid at a concentration of higher than 15 ng/ml.
5. Following a preliminary review undertaken pursuant to Regulation 21.20.1., the Player was notified by a letter to him care of the National Rugby Federation of Ukraine (the “Union”) dated 22 April 2005 that the “A” sample of the specimen he had provided had resulted in an Adverse Analytical Finding for the presence of Cannabinoids. The Player was given the option of having the “B” sample of his specimen analysed and was notified that pursuant to Regulation 21.19.1 he was provisionally suspended pending the outcome of the case. It was subsequently confirmed by the Union on 27 April 2005 that the Player had been suspended from all rugby activity pending the outcome of his case and that his club had been informed.
6. The Player did not avail himself of the opportunity of having the “B” sample of his specimen analysed.
7. In a letter of explanation sent by the Player to the Union, the player wrote (translation):

On 12<sup>th</sup> March, 2005, after the match Czech Republic – Ukraine, I felt a very strong pain in my knee, so I went to a chemist’s shop and bought an anaesthetic according to chemist’s advice. I took 6 pills, and my pain reduced. I didn’t use this medicine any more. I don’t remember the name of the medicine. I didn’t take any other medicine before.

8. An email to the Board from the General Secretary of the Union dated 23 May advised that the Union had heard from the Player, his club's doctor, president and coach as well as the doctor, manager and coach of the national team. The Player was said to have agreed with the results of the testing of his "A" sample and explained that the presence of the Prohibited Substance was due to his use of an unknown medicine which he had taken without consulting a doctor.

9. The Union advised the Board that its presidium (board) had decided to propose that the Player should be disqualified for a period of one year from 26 April 2005, subject to confirmation by the Board.

10. By a letter to the Player (via the Union) dated 18 May, the Player was informed that a Board Judicial Committee ("BJC") would be appointed to consider his case and was further advised that he could attend the hearing in person, have a representative attend with him or on his behalf, participate by telephone, or make written submissions. The Union was reminded that as the testing had been conducted under Board jurisdiction, the decision of the BJC would (subject to appeal) be final and binding on the Player.

11. The Player elected to participate in the hearing before the Judicial Committee by telephone. The President and General Secretary of the Union as well as the Player's Club President also participated. In addition to the oral evidence and submissions provided at the hearing, the Judicial Committee also considered the documents placed before it, including the following:

- a) Preliminary Review Report
- b) Laboratory Analysis Report
- c) Doping Control Form
- d) Mission Summary, International Doping Tests and Management
- e) Letter from the Player to the Union dated 8 May 2005
- f) Bundle of email correspondence between the Board and the Union
- g) Letters from the Board to the Player via the Union

12. The hearing was conducted by telephone conference on 13 June 2005.

### *Anti-Doping Rule Violation Established*

13. At the outset of the hearing the Player was asked to, and did, acknowledge the use of a Prohibited Substance and accept the analytical findings. Accordingly, we are satisfied that the Player has committed an Anti-Doping Rule Violation due to the presence of a Prohibited Substance, namely Cannabinoids, in the Player's urine sample.

### *The Player's Account*

14. The Player said that he had made a "terrible mistake" by using medicine which he was unfamiliar with and not consulting a doctor.

15. The Player said that after playing for his country against the Czech Republic in Prague, his knee was painful. He spoke to the team doctor who suggested that the Player undergo physiotherapy upon his return to Ukraine the next day.

16. Because of the pain he was experiencing, the Player went to a chemist in Prague to obtain some pain relief medication. He spoke to a pharmacist who recommended some pills. The Player cannot recall the name of these pills. He claims they looked like ordinary medicine, although he did not pay attention to the pills themselves or the packaging. He took four pills on the day of purchase and two more the next day. He claims no idea of what the pills contained. However, his pain was relieved.

17. Upon his return to Ukraine, the Player did undergo two days of physiotherapy. He also informed the team doctor that he had taken "anaesthetic pills" which had relieved the pain and that he felt better.

18. The Player acknowledged that he and his fellow players are "well informed" on the use of prohibited substances. He accepts that he is responsible for the presence of a Prohibited Substance in his system.

19. The Player denies any use of marijuana, recreationally or otherwise, and offered no other explanation for the presence of Cannabinoids in his system.

*Anti-Doping Rule Violations Involving Specified Substances*

20. It was confirmed that this is the Player's first anti-doping rule violation.

21. Although the period of ineligibility for a first offence involving the presence of a Prohibited Substance is usually two years, certain "specified substances", including Cannabinoids, are governed by Regulation 21.22.2, which provides as follows:

**Imposition of Ineligibility for Specified Substances**

21.22.2 The Prohibited List may identify specified substances which are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents. Where a Player can establish that the Use of such a specified substance was not intended to enhance sport performance, the period of Ineligibility found in Regulation 21.22.1 shall be replaced with the following:

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

Second violation: Two (2) years' Ineligibility.

Third violation: Lifetime Ineligibility.

However, the Player or other Person shall have the opportunity in each case, before a period of Ineligibility is imposed, to establish the basis for eliminating or reducing (in the case of a second or third violation) this sanction as provided in Regulation 21.22.4.

22. Regulation 21.22.2 requires us to consider whether the Player has established to the comfortable satisfaction of the Judicial Committee, that his use of Cannabinoids was not intended to enhance sport performance and, if so, to decide what sanction should be imposed for a first violation by the Player.

*Intention to Enhance Sport Performance*

23. We have some difficulty accepting the Player's account. The likelihood that the Player's infraction resulted from his use of non-prescription medication purchased in a pharmacy in Prague is regarded by us as remote. The lack of any corroborating evidence to support the Player's account is troubling.

24. We are nevertheless satisfied that the Player's use of Cannabinoids was not intended to enhance sport performance. Even by the Player's account, he took six pills over a two day period nearly a week before he was drug tested. We feel that it is unlikely that in doing so, he intended to enhance his performance in the match between Ukraine and Romania.

### *Sanctions*

25. The Player, who is presently 26, started playing rugby at the age of 12. He has represented his country at the senior level eight times.

26. Although the Player readily acknowledged having been informed of doping issues by both officials of his Club and his Union, as already indicated, we found his explanation of the means by which cannabinoids entered his system unconvincing.

27. If the Player's version is to be accepted, he took unknown medication, without the benefit of medical advice. He took no steps to determine what the "medicine" contained. He did not even note its name. He did not keep the packaging or obtain a receipt. He was unable to produce any witness who could corroborate his account. In short, there are no mitigating circumstances which the Player has been able to direct us to.

28. We have decided that the Player should be suspended for six months. We have ascertained that, aside from a mid-season break of two weeks, such a term will coincide with the playing season in Ukraine. Accordingly we direct that the period of suspension should run from 27 April 2005 (the date upon which the Union advised the Board that it had provisionally suspended the Player) until and including 26 October 2005.

29. This decision is, subject to review by a Post Hearing Review Body (Regulation 21.25) and an appeal to the Court of Arbitration for Sport, binding on both the Player and the Union. For the sake of clarity, it is intended that the sanction determined by the BJC in this matter shall replace any domestic sanction imposed on the Player by his Union.

30. If the Board wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.9, written submissions should be provided to the Judicial Committee

and to the Player by 17:00 Dublin time on 5 August 2005, with any written submissions by the Player in response to be provided to the Board (which shall be responsible for forwarding such submissions on to the Judicial Committee) by no later than 17:00 Dublin time on 19 August 2005.

25 July 2005

A handwritten signature in black ink that reads "Graeme Mew". The signature is written in a cursive style with a large initial 'G' and a horizontal line under the name.

Graeme Mew (for and on behalf of the Board Judicial Committee)

Gregor Nicholson

Barry O'Driscoll