



**FIVB**

**Anti-Doping**

**Hearing Panel**

**Decision**

In the matter of  
**Mr. Kumar UMANG**  
(India)

**28 November 2012**

## THE FIVB ANTI-DOPING HEARING PANEL

composed by

<b>Ms. Margaret Ann Fleming</b>	(Scotland) Disciplinary Panel Member, acting as Chairwoman
<b>Dr. Annie Peytavin</b>	(France) Medical Commission Member
<b>Mr. Mounir Ben Slimane</b>	(Tunisia) Disciplinary Panel Member

at the hearing which took place via telephone conference  
on 28 November 2012, 10:30am Swiss time,  
heard the case identified as n. 6010178:

### FACTUAL BACKGROUND

1. On 24 July 2012, the FIVB was notified by the WADA-accredited Laboratory in Beijing, China ("Laboratory") regarding an Adverse Analytical Finding concerning the A-sample 6010178, which contained the prohibited substance 19-norandrostenedione in a quantity higher than the established threshold.
2. The above mentioned urine sample was taken in-competition on 6 July 2012 in Shanghai, China during the 2012 AVC Volleyball Men's Club Championships and belongs to the athlete Mr. Kumar Umang (Indian, born 30 March 1990, hereinafter "Athlete").
3. After having received a copy of the doping control form by the Asian Volleyball Confederation ("AVC"), on 31 July 2012 the FIVB informed the Athlete a) of the adverse analytical finding; b) of his right to request the analysis of the B sample until 7 August 2012 and to attend the opening thereof; and c) that he was provisionally suspended with immediate effect. Said correspondence was sent to the Athlete through the AVC and the Volleyball Federation of India ("VFI").
4. By email of 7 August 2012 the VFI forwarded to the FIVB the documentation presented by the Athlete, namely a signed request to have the B sample analysed as well as a medical prescription dated "7/6/12" by Dr Manish Agarwal of the Bone and Joint Care Clinic in Dehradun, India.

5. By correspondence dated 9 and 14 August 2012, the FIVB informed the Athlete that the opening and analysis of the B sample would be performed on 20 August 2012 at the Laboratory.
6. On 16 August 2012 the VFI Secretary General, Mr. K. Murugan, wrote to FIVB as follows: *"We have already informed the player about your previous mail. We yet [sic] to receive the confirmation from the player. We will reply to you tomorrow in this regard."*
7. On 17 August 2012 the FIVB Medical and Anti-Doping Officer wrote to VFI as follows: *"Following the phone conversation I had with David this morning, he confirmed that the player will not attend the B-sample opening neither any representative. Therefore, I informed the Beijing laboratory. The B-sample opening will be held on Monday 20<sup>th</sup> at 9AM. In conformity with the WADA rules, the laboratory will find an independent observer to witness the process."*
8. By letter of the same day, the FIVB authorized the Laboratory to proceed with the B-sample opening/analysis and also to appoint an independent observer to witness the process.
9. On 21 August 2012 the Laboratory informed FIVB as follows: *"We started B analysis yesterday and finished today. Results were consistent with that of A analysis and were entered into ADAMS."*
10. By letter dated 23 August 2012 the FIVB communicated to the Athlete the results of the B sample analysis and invited him to submit his official statement and explanations by 13 September 2012.
11. On 15 October 2012 the FIVB reminded the Athlete that he had to submit his explanation as soon as possible and that he remained provisionally suspended since 31 July 2012.
12. Failing a response by the Athlete, on 20 November 2012 the FIVB informed the Athlete that he had the right to be heard before the FIVB Anti-doping Hearing Panel either by telephone conference (on 28 November 2012, at 9.30am Swiss time) or by a hearing in person. The Athlete was invited to respond until 22 November 2012 whether he would participate in the hearing and was also provided with a last opportunity to file his position in writing, within the same deadline.

13. On 28 November 2012 the VFI Secretary General Mr Murugan wrote to FIVB as follows:  
*"We have already informed the situation to Mr.Umang. But there is no response from him and he does not want to attend the hearing neither by phone [sic] nor in person. Hence you may take any decision which we will agree."*
14. On the same day the Anti-Doping Hearing Panel deliberated via telephone conference. Also in attendance were Mrs. Nadege Veintimilla, FIVB Medical and Anti-Doping Officer, and Mr. Andreas Zagklis, FIVB legal counsel.

### **LEGAL CONSIDERATIONS**

1. At the outset the Panel notes that, despite several invitations by FIVB, the Player did not submit any explanations nor participated in the hearing. In this respect, Article 18.6 of the FIVB Medical Regulations is relevant to this case:  
*"Notice to an Athlete or other Person who is a member of a National Federation may be accomplished by delivery of the notice to the National Federation."*
2. Indeed, the Athlete being Indian, all notifications to him were accomplished by FIVB through the VFI. In addition, the Panel feels satisfied that the notifications sent to the Athlete through the VFI have reached him, as evidenced by the statements of the VFI Secretary General Mr Murugan and by the fact that the Athlete was informed about the adverse analytical finding (communicated to him also through VFI) and exercised his right to have the B sample opened and analysed.
3. The Panel shall therefore proceed and decide the case on the basis of the records as it stands.
4. According to the WADA 2012 Prohibited List, the substance 19-norandrosterone is included in the category S1.A (*Exogenous Anabolic Androgenic Steroids*) and is prohibited both in- and out-of-competition.
5. According to Article 2.1 of the FIVB Medical Regulations, the presence of this substance in an athlete's bodily specimen constitutes an anti-doping rule violation.
6. No Therapeutic Use Exception (T.U.E.) exists, as per Article 4.4 of the FIVB Medical Regulations.

7. Therefore, being the presence of the prohibited substance in the Athlete's urine undisputed, the anti-doping rule violation under Article 2.1 of the FIVB Medical Regulations is established.
8. Further, the Panel refers to Article 10.2 of the FIVB Medical Regulations, which reads as follows:

*"The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:*

*First violation: Two (2) years' Ineligibility."*

*(emphasis added)*

9. Given that 19-norandrostenedione is a non-specified substance, the Panel shall now review whether Article 10.5 of the FIVB Medical Regulations is applicable to this case.
10. The Panel therefore focuses on the only document submitted by the Athlete and forwarded to FIVB by the VFI, namely the prescription of Dr Manish Agarwal of the Bone and Joint Care Clinic in Dehradun, India ("the Prescription").
11. The Panel notes that a basic requirement under both Article 10.5.1 (No Fault or Negligence) and Article 10.5.2 (No Significant Fault or Negligence) of the FIVB Medical Regulations is that the Athlete *"must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility"* eliminated or reduced.
12. In this respect, the Panel initially notes that the Prescription contains information which put its authenticity into question. Firstly, the date on the Prescription (7/6/2012) is not in compliance with the date which appears on the top left of the page, apparently printed when the Prescription was faxed: "25 Apr 2000". Secondly, even if the latter date were a result of a technical error in a fax machine, the handwritten part of the Prescription starts with the words "Mr" followed by a name which has been manually deleted and overwritten by "Umang Kumar". In the absence of any explanation by the Athlete and on the face of the photocopy submitted by the Athlete, the Panel has

serious doubts on whether the Prescription was in the first place drafted for the Athlete's use or for some other patient.

13. The above notwithstanding, the Panel has reviewed the contents of the Prescription, to the extent they are legible. The following medication appear to have been prescribed by Dr. Agarwal:

- Augmentin
- Chymoral forte
- Zen\_\_\_ [illegible]
- Panto\_\_\_ [apparently Pantoprazole, brand unknown]
- Metaderm
- Ibuprofen

14. The Panel has noticed that two of the abovementioned substances (Chymoral forte and Ibuprofen) are anti-inflammatories, one of them is an antibiotic (Augmentin), one is a medication for stomach protection (Pantoprazole) and one is a corticosteroid applied as cream, lotion or ointment (Metaderm). **None** of the above medications can explain the presence of the prohibited substance in the Athlete's body. The Panel has been unable to identify the medication listed third "Zen\_\_\_" on the Prescription; it shall be noted however that the applicable rules expressly assign on the Athlete the burden of proving that the circumstances of an elimination or reduction of the otherwise applicable period of ineligibility exist: both Articles 10.5.1 and 10.5.2 start with the sentence "If an Athlete can establish...".

15. It follows, therefore, that the Athlete has been unable to prove that the conditions for an elimination or reduction of the standard 2-year period of ineligibility are met.

16. The Panel underscores that, according to Article 2.1 of the FIVB Medical Regulations, "*It is each Athlete's personal duty to ensure no Prohibited Substance enter his or her body. Athletes are responsible for any prohibited substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is no necessary that intent, fault, negligence or knowing use, by the athlete's part, be demonstrated in order to establish an anti-doping violation under art. 2.1.*" (emphasis added).

17. In view of the above legal analysis and the evidence on file, considering also the fact that this is the Athlete's first anti-doping violation,

**Taking all the above into consideration**

**THE FIVB ANTI-DOPING HEARING PANEL**

**Concludes and Decides**

1. The athlete Mr Kumar Umang (India) has committed an anti-doping rule violation (presence of the prohibited substance 19-norandrostenedione in his bodily specimen) according to Article 2.1 of the FIVB Medical Regulations.
2. A sanction of two (2) years of ineligibility shall be imposed on the athlete Mr. Kumar Umang, according to Article 10.2 of the FIVB Medical Regulations.
3. The period of ineligibility shall start on the date of the provisional suspension imposed by FIVB, i.e. on 31 July 2012, and end on 30 July 2014, as per Article 10.9 of the FIVB Medical Regulations.

Decided in Lausanne, on 28 November 2012

**On behalf of the FIVB ANTI-DOPING HEARING PANEL**

A handwritten signature in black ink that reads "Margaret Ann Fleming". The signature is written in a cursive style with a large initial 'M' and 'F'.

Ms. Margaret Ann Fleming

Chairwoman