

**BEFORE THE NEW ZEALAND RUGBY UNION INCORPORATED ANTI-DOPING JUDICIAL COMMITTEE**

**BETWEEN**

**DRUG FREE SPORT NEW ZEALAND  
Applicant**

**AND**

**A PLAYER  
Respondent**

---

**DECISION ON ANTI-DOPING VIOLATION**

---

Judicial Committee: Helen Morgan (Chair)  
Dr Deborah Robinson  
Henry Moore

Registrar: Fiona Martin

## Introduction

1. The Applicant has brought Anti-Doping Rule Violation (**ADRV**) proceedings against the Respondent (a male) alleging breaches of the Sports Anti-Doping Rules 2023 (**SADR**).
2. These breaches relate to mail addressed to the Respondent that was intercepted by the New Zealand Customs Service addressed to the Respondent at his home address, containing:
  - a. Fresenius Kabi, Chorionic Gonadotropin for injection, 10,000 units/10ml 8 x 10ml vials;
  - b. DNA Health, BPC-157 Pro, BPC-157, 500mg with salcaprozate 3mg 180 capsules (3 bottles x 60);
  - c. Biotech peptides, CJC-1295 (ipamorelin) 5/5mg, 3 x vials;
  - d. Biotech peptides, Epithalon, 25mg, 1 x vial; and
  - e. Hospira, Bacteriostatic water for injection, 1 x 30ml vial.
3. The following substances are on the Prohibited List 2022, which is incorporated into SADR under Section 4:
  - a. Chorionic Gonadotropin (for males only). It is a non-specified substance.
  - b. CJC-1295 (ipamorelin). It is a non-specified substance.
  - c. BPC-157 is a non-approved substance and prohibited at all times. This substance is specified.(together **Prohibited Substances**)
4. Epithalon and Hospira, Bacteriostatic water are not prohibited and as such are not relevant for the Committee to consider.
5. The Respondent has admitted the ADRVs.
6. Due to various matters associated with the Respondent and this matter, this matter has taken some time, and the Committee has received, amongst others, the following key documents over the months:
  - a. Statement of Hayden Tapper dated 26 July 2023;
  - b. Proposed evidence of Respondent dated 28 September 2023;
  - c. Joint memorandum of Counsel regarding sanction dated 17 November 2023;
  - d. Psychiatric Report dated 12 March 2024; and
  - e. Joint memorandum of Counsel regarding disclosure dated 13 May 2024.

## Background

1. The background of this matter is as follows:
  - a. The Respondent accepts he imported and used the Prohibited Substances. They were medicines he had commenced the use of to treat chronic medical conditions while living abroad.
  - b. The Respondent, a New Zealander, lived overseas between 2006 and 2021. He played rugby between 2006 and 2015 attaining international representation for the country he was living in.
  - c. In 2015 he was forced to stop playing rugby as a result of health issues and his health deteriorated from then on.
  - d. Despite seeking medical treatment, the conditions continued to worsen which included weight gain, increased use of alcohol and depression. At this time, he also became estranged from his family.

- e. In 2020, while still residing overseas, the Respondent commenced an aggressive medical regime as a last resort. This included the consumption of the Prohibited Substances. The regime allowed the Respondent to restore his health to a level and reconcile with his family.
- f. Upon returning to New Zealand in mid-2021, the Respondent continued to consult with his overseas specialist as a result of the Covid Pandemic limitations in New Zealand. This meant the Respondent remained on the same regime and was importing the Prohibited Substances into New Zealand so as to be able to maintain his treatment.
- g. The Respondent was originally not playing rugby upon his return to New Zealand, but through contacts, he was asked to play club rugby in Auckland as the team was low on numbers as a result of the lockdowns. He then enrolled with the club in 2022, and played approximately six club games, coming off the bench.
- h. This registration meant he was enrolled with New Zealand Rugby and bound by the SADR.
- i. After being informed by the Applicant that the Prohibited Substances were in breach of SADR, the Respondent attempted to obtain a retrospective Therapeutic Use Exemption (section 4.4 of SADR), but the application was unsuccessful.
- j. As a result of the unsuccessful application, the Respondent accepted he had breached SADR and had committed ADRV and was provisionally suspended on 9 August 2023.
- k. He has not played rugby or enrolled with a club since notification from the Applicant.

### **Submissions**

1. With the Respondent's admission in relation to the breach, submissions from the Applicant and the Respondent first related to the sanction. The parties agreed the appropriate sanction for the Respondent is a period of 2 years of ineligibility under Rule 10.2.2 of SADR back dated to the date on which the provisional suspension commenced, being 9 August 2023.
2. In relation to this, the key submissions from the Respondent were:
  - a. At the time he agreed to join the Auckland rugby club and play for the team he was not aware that his use of the Prohibited Substances to treat his medical condition would be an issue for him as a recreational athlete registered with New Zealand Rugby; and
  - b. The ADRV committed by the Respondent was not intentional. The sole purpose of the Respondent's use of the Prohibited Substances was to treat his chronic medical conditions.
3. The primary issue before the Committee related to disclosure of details of Respondent and certain information relating to him and his condition. In relation to this matter the Committee has been assisted by submissions from Counsel for both parties.
4. Central to the Respondent's request for non-disclosure is the consequences to his mental health in the event of identifying information being released. The Committee received a copy of a psychiatrist's report dated 12 March 2024 which was prepared as an independent report to a third party (being the Committee). This report submitted:
  - a. The Respondent has experienced a significant depressive disorder for which he has received intensive pharmacological and psychological treatment.
  - b. While the depressive disorder is now in remission, he remains at significant risk of a deterioration in his emotional condition due to the poorly controlled attention deficit

hyperactivity disorder, for which he is now on multiple stimulant medications, and underlying emotional fragility.

- c. There is a likelihood that the publication of the Respondent's name or any other details that could identify him in relation to his sanction, would have a significant negative impact on the Respondent's mental health.
5. Together with the psychiatrist's report, Counsel for the Respondent submitted:
- a. While there is a presumption of open justice, departures from that principle can occur in the interests of justice.
  - b. It is not mandatory for any publication to occur; it is optional under SADR 14.3.7.
  - c. The ADRV was inadvertent and related to a medical condition. There is no "bad actor" consideration.
  - d. The Respondent's history of mental health issues means his identity and any identifying details should be protected.
  - e. Sufficient details of the case without identifying the Respondent can be published which both deters and educates other possible transgressors.
6. Non-disclosure of identifying details was initially opposed by the Applicant. However, under a joint memorandum of Counsel regarding disclosure dated 13 May 2024, the following was agreed:
- a. Public disclosure is a substantive matters in the anti-doping context, expressly recorded as one of the possible consequences of an ADRV.
  - b. Both the Committee and the Applicant have discretion and obligation to ensure that results of proceedings are properly disclosed.
  - c. The Committee's decision should be disclosed in a manner proportionate to the facts and circumstances of this case.
  - d. In view of the unique facts and circumstances of this case and the Respondent's status as a Recreational Athlete the following information should be redacted in the Committee decision:
    - i. The Respondent's name;
    - ii. The country for which he played international rugby;
    - iii. The New Zealand club for which he was playing; and
    - iv. The condition from which he was suffering.
  - e. The Applicant will approach its public disclosure on the same basis.

## **Findings**

1. The Committee acknowledges the Respondent's admission and as such the findings of the Committee relate to sanction and disclosure only. The Committee has been greatly assisted by the joint memoranda between the Applicant and the Respondent and commends them for their efforts in this.
2. The Committee accepts the ADRV by the Respondent was not intentional. The use by the Respondent of the Prohibited Substances was at all times for the treatment of his medical conditions, it was not for any sporting performance benefit.

3. *Public Disclosure* is one of the consequences of ADRV, it acts a deterrent. It is a sub-definition within the definition of *Consequences of Anti-Doping Rule Violations*, being:

*The dissemination or distribution of information to the general public or persons beyond those persons entitled to earlier notification.*

4. Rule 14.3.2 of SADR includes a mandatory *Public Disclosure* requirement including the sport, the violation, the name, the substance/method and the consequences. At all times, this is subject to Rule 14.3.7, which sets out:

*The mandatory Public Disclosure required in Rule 14.3.2 shall not be required where the Athlete or other Person who has been found to have committed an anti-doping rule violation is a Minor, Protected Person or Recreational Athlete. Any optional Public Disclosure in a case involving a Minor, Protected Person or Recreational Athlete shall be proportionate to the facts and circumstances of the case.*

5. The Respondent is captured within the definition of *Recreational Athlete* under SADR, being:

*Recreational Athlete: Any Athlete who is not a National-Level Athlete or an International-Level Athlete, provided, however, that within the last five years prior to committing any Anti-Doping Rule Violation: (a) the Athlete has not been a National-Level Athlete or an International-Level Athlete; (b) the Athlete has not represented any country in an International Event in an open category; and (c) the Athlete has not been included within any Registered Testing Pool or other whereabouts information pool maintained by any International Federation or National Anti-Doping Organisation.*

6. With there being no requirement for mandatory *Public Disclosure* the Committee's consideration moves to what is proportionate to the facts and circumstances of the case. This case sits on its specific and unique circumstances all of which combine to require a limited disclosure of certain details, being those set out in the joint memorandum of Counsel dated 13 May 2024 to ensure protection of the mental health of the Respondent while at the same time providing sufficient details to the general public for deterrence and education.
7. There are no aggravating factors in this case and as such the Committee does not need to consider SADR Rule 10.4.

## **Sanction**

1. As a result of the findings, the Respondent's ADRV falls under SADR rule 10.2, being:

**10.2** *Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substances or Prohibited Methods*

*The period of Ineligibility imposed for a violation of Rules 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 or 10.7:*

**10.2.1** *The period of Ineligibility, subject to Rule 10.2.4 shall be four years where:*

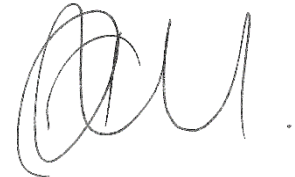
**10.2.1.1** *The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*

**10.2.1.2** *The anti-doping rule violation involves a Specified Substance or a Specified Method and DFSNZ can establish that the anti-doping rule violation was intentional.*

10.2.2 If Rule 10.2.1 does not apply, subject to Rule 10.2.4.1, the period of Ineligibility shall be two years.

2. With the finding of no intent, Rule 10.2.2 applies, and with Rule 10.4 not being applicable in this matter, the period of Ineligibility shall be two years commencing on 9 August 2023 and terminating at 11.59pm on 8 August 2025.
3. During the Period of Ineligibility, the Respondent is prohibited from participating in any capacity in a *Competition* or activity (other than authorised anti-doping education or rehabilitation programs) authorised or organised by any *Signatory* or *Signatory's* member organisation, or other member organisation of a *Signatory's* member organisation or in *Competition* authorised or organised by any professional league or any *International* or *National-level Event Organisation* or any elite or national sporting activity funded by a government agency.
4. In relation to *Public Disclosure*, the following details will be redacted or not included within decision of the Committee:
  - a. The Respondent's name;
  - b. The country for which he played international rugby;
  - c. The New Zealand club for which he was playing at the time of the ADRV; and
  - d. The condition from which he was suffering.
5. The Respondent is entitled to have the sanction or finding referred to a Post-Hearing Review Body.

Dated 9 July 2024



---

Helen Morgan (Chair)  
Dr Deborah Robinson  
Henry Moore