

**IN THE MATTER OF PROCEEDINGS BROUGHT BY THE INTERNATIONAL TENNIS  
INTEGRITY AGENCY UNDER THE 2022 TENNIS ANTI-DOPING PROGRAMME**

Before:

Katherine Apps KC (Chair)  
Professor Peter Sever  
Harveen Thauli

**International Tennis Integrity Agency (ITIA)**

**-and-**

**Sydney Dorcil (Player)**

---

**DECISION**

---

**THE PARTIES**

1. The Player, Sydney Dorcil (the **Player**) is a 20-year-old tennis player from Boca Raton, Florida. The Player has been competing at an elite level since 2019 and her highest Women's Tennis Association (**WTA**) ranking has been 1255.
2. The International Tennis Integrity Agency (the **ITIA**) is an independent body established by the international governing bodies of tennis to promote, encourage and safeguard the integrity of professional tennis worldwide. The ITIA oversees the Tennis Anti-Doping Programme (**TADP**), which is premised on the World Anti-Doping Agency (**WADA**) Code.

**THE INDEPENDENT EXPERTS**

3. The Player and the ITIA are together referred to as the **Parties**.
4. The Parties agree that this Panel has jurisdiction under Article 8 of the TADP. No party has raised any objection to any member of the Panel and at the start of the hearing all Parties confirmed their consent to the hearing.

## **SUMMARY OF DECISION**

5. Following a hearing on 16 June 2023 and considering the written and oral evidence and submissions from the Parties, our unanimous decision is that:
  - a. Ms Dorcil is sanctioned to a period of Ineligibility of Four years from 13 January 2023 (being 2 days after the letter notifying her of her suspensions and the date from which the Athlete acted in accordance with that suspension) and
  - b. Her results be disqualified from matches played on 14, 15, 22-23, 25 and 30 November 2022 and 11 and 12 January 2023.

## **STRUCTURE OF DECISION**

6. This decision has the following structure:
  - a. Summary of the Anti-Doping Rule Violations (**ADRVs**)
  - b. Procedural background before and at the hearing
  - c. Legal issues for determination
  - d. The Legal Framework
  - e. Relevant facts
  - f. Proof of Source
  - g. Intentionality in the absence of proof of source

- h. Disqualifications
- i. Other consequential
- j. Orders
- k. Conclusion

## SUMMARY OF ADRVs

### *The Sample Collection and Findings*

7. The Player participated in the WTT W15 event in Lima, Peru, which took place from 14 to 20 November 2022 (the **Event**). She was selected for In-Competition testing on 15 November 2022. The Player provided a urine sample, which was split into an A sample and B sample.
8. The A sample (A1118455) was analysed by the World Anti-Doping Agency (**WADA**) accredited laboratory, Laboratoire de contrôle du dopage, INRS, located in Montreal, Canada (the **Laboratory**). The A sample was analysed and the Laboratory reported an Adverse Analytical Finding (**AAF**) for boldenone and its metabolite.
9. Boldenone is a “Prohibited Substance” in the category of anabolic androgenic steroids under category S1.1 of the 2022 WADA Prohibited List. It is a “non-Specified Substance.”
10. The Laboratory’s report confirms that the results are consistent with the exogenous origin of boldenone and its metabolite. The estimated concentration of boldenone and its metabolite in the A sample was 26.8 ng/mL and 2.7 ng/mL, respectively.
11. The Player had not been granted a Therapeutic Use Exemption for boldenone, as provided in the *International Standard for Therapeutic Use Exemptions*, under Article 4.4 of the TADP.
12. On 10 January 2023, the ITIA notified the Player that she may have committed ADRVs under Articles 2.1 and/or 2.2 of the TADP. On the same day, the Player requested an analysis of the B sample.

13. On 10 January 2023, the ITIA provisionally suspended the Player. The Player did not initially act in accordance with the Provisional Suspension and competed at a tournament on 11 and 12 January 2023. The Player began her Provisional Suspension on 13 January 2023 (the **Provisional Suspension**).
14. On 18 January 2023, the B sample (B1118455) was analysed and the Laboratory found that the B sample also contained boldenone and its metabolite, thereby confirming the results of the A sample.
15. On 24 January 2023, the Player was notified of the results of the B sample.

### ***Formal Notice of Disciplinary Charge***

16. On 30 January 2023, the ITIA sent the Player a letter charging her with the commission of ADRVs under Articles 2.1 and/or 2.2 of the TADP, on the basis that boldenone and its metabolite, which are prohibited not only In-Competition but also Out-of-Competition, were present in the A sample that she provided at the Event on 15 November 2022.

### **PROCEDURAL BACKGROUND BEFORE AND AT THE HEARING**

17. On 27 February 2023, Katherine Apps, KC, was selected for appointment as this Panel's Chair. Pursuant to Article 8.3.3 of the TADP, the Parties were notified of Ms Apps appointment as Chair and neither raised any objections.
18. On 16 March 2023,<sup>1</sup> the Chair issued procedural directions, which the Parties had already agreed to, setting out a timetable for submissions.
19. On 26 April 2023, the Player submitted a pre-hearing brief of submissions with exhibits, including statements from herself and her father, a polygraph test and a statement from a Dr Davis (said to be a veterinarian).

---

<sup>1</sup> The date was erroneously written as 16 March 2022.

20. On 18 May 2023, Professor Peter Sever and Harveen Thauli were selected for appointment as wing members to this Panel. Pursuant to Article 8.3.3 of the TADP, the Parties were notified of the appointments to this Panel and neither raised any objections to its composition.
21. On 19 May 2023, the ITIA submitted an answer brief with exhibits in response to the Player's pre-hearing brief and an expert report from a Professor Ayotte.
22. On 1 June 2023, the Player submitted a reply brief with exhibits in response to the ITIA's answer brief, including a statement from the Player's mother, a letter from Any Lab Test Now and some LinkedIn profiles of individuals said to hold roles in the Olympia Compounding Pharmacy (**Olympia**).
23. On 8 June 2023, the ITIA submitted reply submissions in response to the Player's reply brief.
24. On 9 June 2023, the Parties provided electronic hearing bundles consisting of the Parties' submissions from 16 March to 8 June 2023 and case law authorities (the **Core Bundle (452 pages)** and **Authorities bundles (934 pages)**).
25. On 12 June 2023, the ITIA submitted an agreed pre-reading list of documents, as well as an agreed list of issues.
26. On 12 June 2023, the Player submitted a skeleton argument, which summarised the issues and the Player's key evidence with references to case law. This narrowed the issues further as two of the agreed issues, relating to the start time of any period of prohibition and the competitions to be disqualified, were agreed.
27. On 15 June 2023, the ITIA provided a small number of supplementary documents to the Player and the Panel. These documents contained various screenshots, including the International Tennis Federation's (**ITF**) website (ITFTennis.com) discussing the risk of supplements.
28. On 15 June 2023, the Parties provided a hearing timetable and a list of attendees at the hearing.

29. On 16 June 2023, the Panel held the hearing on the merits by Zoom with the following attendees:

	<b>NAME</b>	<b>POSITION</b>
<b>PANEL</b>	Katherine Apps KC	Panel Chair
	Professor Peter Sever	
	Harveen Thauli	
<b>SECRETARIAT</b>	Astrid Mannheim	Case Manager
<b>RESPONDENT</b>	Sydney Dorcil	Respondent
	Howard Jacobs	Counsel
	Katy Freeman	Counsel
	Job Dorcil	Respondent Witness
	Tamaala Dorcil	Respondent Witness
<b>ITIA</b>	Kendrah Potts	External Counsel
	Katy Stirling	ITIA Legal Representative
	Nicole Sapstead	ITIA Anti-Doping Representative
	Christiane Ayotte	ITIA expert witness
	Stuart Miller	ITF Observer

Simona Viel	ITIA Observer
Josh Coakes	ITIA Observer
Julia Lewis	ITIA Observer
Jodie Cox	ITIA Observer

30. At the start of the hearing, the ITIA made an application that the Player's witnesses be excluded from the hearing while the Player was giving evidence. The Player consented to this application provided the ITIA's witness, Professor Ayotte, was similarly excluded while the Player and her witnesses testified. After the Panel briefly deliberated, the Chair gave an oral decision excluding all witnesses who were not giving evidence at the time, save for the Player who was permitted, as the person concerned, to attend throughout. This decision has not been transcribed into this decision.
31. During the cross-examination of Professor Ayotte, the Player asked questions to Professor Ayotte directly instead of asking them through her counsel, Mr Jacobs. The Chair explained to the Player that since she was represented, Mr Jacobs would ask the questions on her behalf. The Panel gave Mr Jacobs some additional time at the conclusion of his cross-examination to consult with the Player and verify whether he had instructions to ask more questions. He had no further questions. An additional issue had also been resolved before the hearing. The Player had originally argued that her father, Dr Dorcil, had provided substantial assistance but the Player's Counsel stated that this argument was also not pursued, as no report had been made. The Player's Counsel reserved his position as to whether he might make a further application at a later date if substantial assistance were later provided.
32. One of the issues in the agreed list was costs. The ITIA made no application to the Panel. It was agreed by the Parties that any application should be made within 14 days from the date this decision is communicated to the Parties and the Player would have the right to make representations in response. The Chair gave the Player's counsel time to make

brief submissions while he was present in the hearing. Those submissions were that such an application would be unprecedented and disproportionate and the ITIA had not submitted that any of the Player's submissions were made unreasonably or vexatiously. If an application for costs is made, the Chair will make further directions. If the Player wishes to rely on those submissions, she need not file anything further but should indicate as such by email to the Panel Secretariat.

33. At the conclusion of the hearing, the Chair asked the Parties whether their right to be heard had been fully respected and gave them an opportunity to make further submissions if they wished. The Parties indicated that they were content with the fairness of the hearing and that they had no further submissions to make.

## **LEGAL ISSUES FOR DETERMINATION**

34. By the time of the hearing on 16 June 2023, the Parties were agreed that the issues for determination by the Panel related solely to the appropriate period of Ineligibility. The ITIA's case is that a 4 year prohibition from 13 January 2023 is appropriate, plus disqualification of results listed in the order. The Player accepts the disqualification of results and the start date for the period of disqualification but has sought to persuade us that the period should be reduced on the basis that:
  - a. The breach was not intentional (Article 10.3 TADP);
  - b. There was No Fault or Negligence (Article 10.5 TADP); and
  - c. There was No Significant Fault or Negligence (Article 10.6.1 or 10.6.2 TADP).
35. The Panel must, therefore, decide the following legal issues:
  - a. Did the Player prove the source of the boldenone and its metabolite found in her system?
  - b. If the Player does not prove the source, did the Player lack the intention to commit the ADRVs under Article 10.3 of the TADP?



- c. If the Player proves the source and that the breach was not intentional, should the Player benefit from the fault-related reductions of No Fault or Negligence under Article 10.5 of the TADP or No Significant Fault or Negligence under Article 10.6 of the TADP?

## THE LEGAL FRAMEWORK

36. It is common ground that the TADP is intended to implement the same duties and defences as are available under the World Anti-Doping Code and WADA's International Standard for Results Management.
37. The TADP is also arguably more specific in a number of areas, for example it is more prescriptive as to the areas which should be covered in any decision of this Panel (see rule 9). This includes a requirement that this decision indicates the available appeal routes and deadline (see 8.5.2(d), which we indicate below at paragraph 105).
38. The ITIA has the burden of establishing that ADRVs have occurred.
39. The elements of a breach of Article 2.1.1 of the TADP are straightforward: *It is each Player's personal duty to ensure that no Prohibited Substances enters their body. Players are responsible for any Prohibited Substance or any of its Metabolites or Markers to be present in their Samples. Accordingly, it is not necessary to demonstrate intent, Fault, Negligence or knowing Use on the Player's part in order to establish an Article 2.1 Anti-Doping Rule Violation; nor is the Player's lack of intent, Fault, Negligence or knowledge a defence to an assertion that an Article 2.1 Anti-Doping Rule Violation has been committed.* It is a strict liability offence that is established by proving that a Prohibited Substance was present in an athlete's sample.
40. In this case, sufficient proof was established by the presence of boldenone and its metabolite in the Player's A sample and B sample under Article 2.1.2 of the TADP. Furthermore, the Player does not dispute the findings in her samples.
41. Pursuant to Article 10.2.1.1 of the TADP, the starting point for the period of Ineligibility is four years "*where an Anti-Doping Rule Violation does not involve a Specified Substance or*

*a Specified Method, unless the Player or other Person establishes that the Anti-Doping Rule Violation was not intentional.” Article 10.2.3 of the TADP states: “As used in Article 10.2, the term ‘intentional’ is meant to identify those Players or other Persons who engage in conduct that they 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.”*

42. Article 10.2 of the TADP provides that an athlete with no previous doping offence, but who breaches Article 2.1 of the TADP, and where the rule breach does not involve a Specified Substance, is subject to a period of Ineligibility of four years, unless the athlete can establish that the Anti-Doping Rule Violation was not intentional, then the period of ineligibility is two years. When the burden of proof shifts to the athlete to rebut a presumption, the standard of proof is by a balance of probability.
43. According to the World Anti-Doping Code and under the TADP there are two phases for determining whether the period of Ineligibility is four years or two years for a breach of Article 2.1 of the TADP. In the first phase, a hearing panel is asked to distinguish between intentional and non-intentional violations. If the violation is not intentional, the hearing panel then considers the fault-related reductions in the second phase.
44. To benefit from the fault-related reductions of No (Significant) Fault or Negligence under 10.5 or 10.6 of the TADP, these Articles require that an athlete must establish, as a pre-requisite, how the Prohibited Substance entered their system. If established, the period of Ineligibility may be reduced further depending on the athlete’s degree of Fault. Therefore, there is no middle ground between four years and two years: If it is intentional, the period of Ineligibility is four years; if it is not intentional, the period of Ineligibility is two years, subject to a further reduction based on No (Significant) Fault or Negligence. Therefore, reductions based on No (Significant) Fault or Negligence do not apply to intentional violations.

### ***Proving the Source and Lack of Intention***

45. The language in Articles 10.2.1.1 and 10.2.3 of the TADP indicates that it is not a strict precondition to establish the source of the Prohibited Substance for a finding that an athlete did not act intentionally. However, this is rare and there are only a (numerically) small number of cases at CAS under the World Anti-Doping Code in which hearing panels have deviated from this principle and found an athlete did not act intentionally without the athlete establishing the source. In these decisions, the hearing panels analysed the totality of the evidence, including the athlete's evidence as well as the efforts to identify the source. In all of those cases, the hearing panel wholly believed the athlete.
46. Decisions where the athlete did not have to prove the source of the Prohibited Substance to benefit from a reduction of a period of Ineligibility from four to two years are *WADA v. Schoeman* (CAS 2020/A/7083) (**Schoeman**) and *WADA v. Swimming Australia & Jack* (CAS 2020/A/7579) (**Jack**). The Panel did, however, state at paragraph 85 of the *Schoeman* decision: "...the Panel agrees with consistent CAS case law that it is offered flexibility to examine all the objective and subjective circumstances of this case and decide if, **on the basis of the exceptional circumstances of the present case**, a finding that the violation was not intentional could be warranted, despite the failure of the Athlete to establish the source of the GW present in his body." [Emphasis added.] The Athlete also relies on statements made in CAS in *Fiol Villanueva v. FINA* (**Villanueva**) (2016/ A/4534) at [37]).
47. In *Abdelrahman v. WADA & Egyptian Anti-Doping Agency* (CAS 2017/A/51016 & 5036), the hearing panel considered previous cases, including *Villanueva v. FINA* (CAS 2016/A/4534) and *Ademi v. UEFA* (CAS 2016/A/4676) (**Ademi**), and stated:
123. [...] it could be de facto difficult for an athlete to establish lack of intent to commit an anti-doping rule violation demonstrated by presence of a prohibited substance in his sample if he cannot even establish the source of such substance: proof of source would be an important, even critical, first step in any exculpation of intent, because intent, or its lack, are more easily demonstrated and/or verified with respect to an identified "route of ingestion". However, the Panel can envisage the possibility that it could be persuaded by an athlete's assertion of lack of intent, where it is sufficiently supported by all the circumstances and context of his or her case, even if, in the opinion of the majority of the Panel, such a situation may inevitably be extremely rare: where an athlete cannot

*prove source, it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him.”*

[...]

125. *In this context, therefore, it is this Panel’s opinion that, in order to disprove intent, an athlete may not merely speculate as to the possible existence of a number of conceivable explanations for the AAF (such as sabotage, manipulation, contamination, pollution, accidental use, etc.) and then further speculate as to which appears the most likely of those possibilities to conclude that such possibility excludes intent. There is in fact a wealth of CAS jurisprudence stating that a protestation of innocence,<sup>6</sup> the lack of sporting incentive to dope, or mere speculation by an athlete as to what may have happened does not satisfy the required standard of proof (balance of probability) and that the mere allegation of a possible occurrence of a fact cannot amount to a demonstration that that fact did actually occur (CAS 2010/A/2268; CAS 2014/A/3820): unverified hypotheses are not sufficient (CAS 99/A/234-235). Instead, the CAS has been clear that an athlete has a stringent requirement to offer persuasive evidence that the explanation he offers for an AAF is more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions. In short, the Panel cannot base its decision on some speculative guess uncorroborated in any manner.*

48. In *Iannone v. FIM* (CAS 2020/A/6978 & 7068) (**Iannone**), the hearing panel stated at paragraph 134:

*What is more controversial is the extent of this possibility. It has until recently nevertheless been characterized by CAS awards and commentators as somewhat “theoretical” or limited to “exceptional circumstances” (CAS 2016/A/4676; CAS 2017/A/5335). CAS panels have held that when the athlete is not able to establish the origin of the substance, **the athlete will have to pass through the “narrowest of corridors” to discharge the burden of proof** weighing upon him (CAS 2016/A/4534). Even in such cases, it is clear that the athlete cannot rely on simple protestations of innocence or mere speculation as to what must have happened but must instead adduce concrete and persuasive evidence establishing, on a balance of probabilities, a lack of intent (see for example, CAS 2017/A/5369; CAS 2016/A/4919; CAS 2016/A/4676; CAS 2017/A/5335). Lawson and Jamnicky, the most recent cases, are outliers inasmuch as they apparently propose an enlargement of that possibility. [Emphasis added.]*

## **Fault-Related Reductions**

49. Fault is defined in Appendix One of the TADP as:

*Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player's or other Person's degree of Fault include, for example, the Player's or other Person's experience, whether the Player or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player only has a short time left in their career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2.*

50. If an athlete establishes the source of the Prohibited Substance and lack of intention, *Cilic v. ITF* (CAS 2013/A/2237) (**Cilic**) sets out how a hearing panel may reduce a suspension based on No (Significant) Fault or Negligence in [69]-[74].

51. As CAS case law may assist us in interpreting the TAPD, we have also adopted a similar approach to the polygraph evidence. We have power to hear evidence in multiple forms where it is relevant to the issues we have to decide. We also bear in mind what was said in **Villanueva**, a case in which Mr Jacobs appeared. In **Villanueva** the Panel held (at [46]) that “*while CAS Panels may have previously found polygraph evidence to be admissible, such evidence is of limited value*” and CAS 99/A/246, the Panel noted (at [5]) that, “*A lie detector test presents a margin of error, however small, and this impairs its reliability as a “detector of lies.”*” We also note that while in some states in the USA, polygraph transcripts are routinely admitted into evidence and they have been trialled in the UK in the context of probation management of sex offenders where positive results (demonstrating deception) have led to inquiries, which led to discovery of further proof of wrongdoing They are inadmissible in a large number of other jurisdictions worldwide

due to concerns as to their reliability. Mr Jacobs correctly cautioned us that no form of evidence is ever 100% reliable, not even a drug test. He had never heard a similar reservation to that expressed in the UK government pilot information on use of polygraphs in probation service cases for assessing risk of harm.

## **THE RELEVANT FACTS**

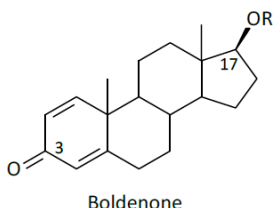
52. Many of the facts in this case are not in dispute. Some, crucially are, and we have indicated below which we accept and why, where it has relevance to the issue we have to determine. We have not determined every dispute of fact or every point put to a witness in cross examination and whether we believe each sentence or have doubts. It is not necessary to do so. We have set out the reasoning below so that the Player can understand our reasons as to why we consider that she did not, on the evidence she presented to us, discharge the burden of proving either the source of the boldenone, nor that the ADRV was not intentional (in the sense as it has been interpreted in CAS case law and with relevance to the TADP).
53. We will set out the largely uncontentious evidence as to the nature of boldenone and what is known (and indeed not known) as to its metabolism in humans before turning to the Player's evidence on the facts of this particular case. This is a weighty factor in our reasoning which we have considered with great care. We have been assisted in our understanding of this evidence both by Professor Ayotte's evidence, but also by the papers cited in her report and by the expertise of the specialist Panel member, Professor Sever, who is a Professor of Clinical Pharmacology at Imperial College London, Honorary Fellow of Trinity Hall College Cambridge and Honorary Consultant Physician at Imperial College Healthcare Trust.

### **Boldenone**

54. Before turning to the nature, properties and metabolism of boldenone we note that the laboratory analysis of Ms Dorcil's sample found the following:

*Boldenone (androst-1,4-dien-17b-ol-3-one) and its metabolite (5b-androst-1-en-17b-ol-3-one) in the roughly estimated concentration of 26.8 ng/mL and 2.7 ng/mL, respectively.*

55. Boldenone is an anabolic steroid. Its full name is 17 $\beta$ -hydroxy-androsta-1,4-dien-3-one. It has a similar molecular structure to testosterone save for the presence of a double bond between carbon atoms in C-1 and C-2. Its molecular structure is as follows:



56. Boldenone is lipophilic (dissolves in oil). It does not dissolve in water.
57. Boldenone steroid doping has previously been recorded in sport, for example in CAS decision 2019/A/6283 *Santana Filho v Federation Equestre Internationale*, a case in which lower amounts were recorded.
58. Boldenone is on the WADA Prohibited list under S1 (and has been for some time). It is always prohibited, both in and out of competition testing. Therapeutic Use Exemptions for Boldenone or its metabolites are not known to be provided as it is usually understood to have no therapeutic benefit in humans. The information on boldenone on the US Anti-Doping Agency Website (USADA) which the Athlete said she was familiar with states “*is not approved by the Food and Drug Administration (FDA) for use in humans for any reason.*” Indeed, as indicated in the Player’s mother’s evidence to us, there are concerns as to the potential impact of Anabolic Steroids, and especially boldenone, on fertility, but the data on this issue is slim (no doubt due to the lack of any therapeutic benefit and because it is on list S1 and its distribution and sale is prohibited under the national law of many countries).
59. In the anti-doping literature there are records of previous black market availability of boldenone and some related pro-hormones for both oral administration and for injection. Professor Ayotte’s evidence is that she has surveyed the black market previously but not recently.

60. Those prohormones, if ingested by a human, would be converted to boldenone by enzymes readily present in the human body. There is a 2013 study de la Torre X, Curcio D, Colamonici C, Molaioni F, Botrè F. Metabolism of boldione in humans by mass spectrometric techniques: detection of pseudoendogenous metabolites. *Drug Test Anal.* 2013 Nov-Dec;5(11- 12):834-42. doi: 10.1002/dta.1567. Epub 2013 Nov 20. PMID: 24259377) which studied the excretion of 100mg boldione (a black market available pro-hormone at that time) which showed the formation of boldenone and its main urinary metabolite in humans. Professor Ayotte's report also records another study in 2012 Gómez C, Pozo OJ, Fabregat A, Marcos J, Deventer K, Van Eenoo P, Segura J, Ventura R. Detection and characterization of urinary metabolites of boldione by LC-MS/MS. Part I: Phase I metabolites excreted free, as glucuronide and sulfate conjugates, and released after alkaline treatment of the urine. *Drug Test Anal.* 2012 Oct;4(10):775-85. doi: 10.1002/dta.1433. Epub 2012 Oct 22. PMID: 23090723 which showed consistent results.
61. We were also directed to another study where boldenone (as opposed to boldione) was ingested by male and female volunteers (only two were women) which looked at the excretion curve after 3 hours and 5 hours following oral ingestion (Wu X, Gao F, Zhang W, Ni J. Metabolism study of boldenone in human urine by gas chromatography-tandem mass spectrometry. *J Pharm Biomed Anal.* 2015 Nov 10;115:570-5. doi: 10.1016/j.jpba.2015.08.014. Epub 2015 Aug 18. PMID: 26319750). It is on the basis of these studies that it is apparent that:
- a. Oral ingestion 22 days before the Athlete's urine test could not plausibly explain the amount of boldenone and metabolites found.
  - b. Oral ingestion 1-3 days before the test could explain the amounts found and would be consistent with the results in these studies.
62. Boldenone is used (lawfully) in veterinary medicine, especially in horses and is commercialised for intramuscular injections, including in the USA and Canada. It is also lawful in some countries (albeit not the USA) in veterinary use for promoting growth in animals raised for meat. There is some published information as to what is known as to the metabolism and half life of boldenone when injected in its form as boldenone



undecylenate as a long chain ester into horses (average 14 days) (Pedro Ruiz, Eric C Strain [2011]. Lowinson and Ruiz's Substance Abuse. A Comprehensive Textbook. Lippincott Williams and Wilkins pp 358). This was accepted by Professor Ayotte and not challenged by Mr Jacobs in cross examination.

63. We have approached this evidence with caution because, whilst similar as mammals, horses and humans are not identical. There is also some degree of variability detected in the Wu study between the excretion curves of different humans and some "outlier" results were present. However, the physical and chemical properties of boldenone and boldenone undecylenate are not contested by the Player. This means that she does not contest that the process of metabolising the substance if injected in undecylenate form must necessarily involve the cleaving of the undecylenate ester before it can be converted into the substances which are detected as metabolites in urine.
64. As with Boldenone itself, Boldenone undecylenate is lipophilic (soluble in oil but not in water). Professor Ayotte's evidence to us, which was accepted by the Player, is that its solubility in water is recorded as between 0.026 and 0.055 mg per litre (1000ml) (i.e. extremely low). This physical property of boldenone undecylenate necessarily means that if boldenone undecylenate was placed in the same vessel with water, or a solution in water of another substance, the liquids would rapidly form two separate phases. They could not mix or dissolve into each other. This splitting into different phases would be readily apparent to the naked eye unless the volume of boldenone undecylenate in oil was exceedingly small. It was also accepted by the Athlete that Boldenone undecylenate has a pale yellow colour (not red – the significance of which we set out below).
65. What we can see from the uncontested aspects of Professor Ayotte's evidence to us is that:
  - a. There was in the Player's 158ml urine sample almost 30ng / ml of boldenone, most of which was boldenone. This is comparably high compared with amounts present in the reported studies.
  - b. The quantity of boldenone was 10 times that of the metabolite, which is:

- i. consistent with what is known of the mechanism of metabolism of boldenone following a recent oral dose (1-3 days prior to the test);
- ii. inconsistent with what is known from the literature concerning the response to an intramuscular injection of boldenone undecylenate in horses 22 days prior to the urine sample being collected; and is
- iii. inconsistent with the injection of a mostly water based injection 22 days before the sample, unless contaminated with or containing an oil phase containing boldenone undecylenate in substantial amounts (in which case that would have been obvious at the time of the injection)

66. We will return to this evidence when considering the Player's arguments as to the source of the boldenone and whether she can discharge the burden of proof.

### **The Player's factual evidence**

67. The Player submitted a pre-hearing brief, a reply brief and a skeleton brief on 16 April, 1 June and 12 June 2023, respectively and written statements from herself, Dr Davis and both of her parents. She also submitted a polygraph test.

68. The Player's written evidence was as follows:

- a. The Player was shocked and upset as she had no idea how the boldenone entered her system. She had no previous knowledge of boldenone. Furthermore, she is an avid anti-doping advocate.
- b. The Player's written evidence was that she is assiduous. She said at [5] *"Throughout my career, I have always done everything I can to make sure that anything I take does not contain any banned substances. For any medications that I have to take, I always check with the WTA to make sure that they are permitted before taking them. In general, I do not take anything without taking some steps to confirm that it does not contain any banned substances."*

- c. She said the following about her supplements (in which she apparently included vitamins):

*"I have used certain nutritional supplements, when necessary, to ensure that I am consuming a balanced and healthy diet, especially when training prevented me from getting my normal meals and putting my body in the best possible condition to train and recover effectively and consistently from workouts. The few supplements that I have used are well-known and reputable in the athletic community I am a part of, and none could be considered "obscure" or "suspect" products"*

- d. The Player says that she left all of her "supplements" at home when she travelled to Lima. She discounted the prospect of supplement contamination on the basis that she had brought none with her to Peru and she had checked they were from "well-respected manufacturers". She made no mention of having taken any other medication with her or while in Lima.
- e. The Player stated that she believed that boldenone entered her system through a contaminated B12 plus lipotropics injection (the **Injection**) that she received at Any Lab Test Now (**Any Lab**) on 24 October 2022. She accompanied her mother and sister to Any Lab. She looked at all the ingredients before receiving the Injection to assure herself that it did not contain any Prohibited Substances.
- f. Any Lab is a national franchise that specialises in laboratory tests and vitamin injections. There are five locations of Any Lab in Florida and 215 throughout the United States.
- g. The Player gave evidence that she believed that her father, Dr. Dorcil spoke to someone at Any Lab by telephone on or about 24 January 2023. He was informed that Any Lab did not have any boldenone on the premises. He was told to contact Olympia in Orlando, Florida because Olympia supplied medications and injections to Any Lab. The Player also gave evidence that her family instructed a private investigator, Blue Line investigations and that during a call between Dr Davis and the Olympia, they denied compounding boldenone.
- h. The Player underwent a polygraph examination on 19 April 2023 where the examiner found her to be truthful (the **Polygraph**). The Player answered, "No" to the question

on whether she ever knowingly used any performance enhancer in the past and whether she had used boldenone, whether she was lying that on 24 October 2022 she received the B12 Injection from Any Lab Test Now in Delray Beach, Florida and whether she had ever knowingly done anything that is against the rules of the ITIA, WTA and ITF.

69. Dr Dorcil's statement said that: "*I reached out to the Any Lab Test Now clinic directly on or around 24 January 2023 and was informed that they do not have Boldenone on the premises. I was directed to Olympia Compounding Pharmacy in Orlando, Florida, who they advised supply medications and injections for the clinic.*" Dr. Dorcil contacted Olympia on or about 2 February 2023. He selected the menu prompt to discuss opening a business account and spoke to a representative. Dr. Dorcil asked whether Olympia provides veterinary pharmaceutical services. The Olympia representative was vague and stated that Olympia "*used to*". Dr. Dorcil then asked whether Olympia had specific veterinary products that use boldenone. The Olympia representative responded: "*We make supplements for human use and sometimes veterinarians will call us and buy them from us.*" Dr. Dorcil did not wish to alarm the Olympia representative, so he thanked him and ended the call.
70. Dr. Dustin Davis, DVM provided a statement in which he purports to be a veterinarian, but does not set out his qualifications. He said that B12 and boldenone can be used in horses. He said: "*It can be rationalised that the use of the two products combined would be utilized and helpful in assisting with equine patients that struggle with muscle tone and weight gain as both are injectable and a combination of the two would help the condition and be easier than administering two injections.*"
71. What Dr Davis does not say is that he has ever seen a product which combines the two, nor that he has used such a product. His evidence is expressly speculation, nor does he engage with the physical properties of the two substances.
72. Various documents were also exhibited in relation to the Olympia Compounding Pharmacy. Those documents show that in a 2016 Florida civil complaint filed against Olympia, Olympia was described as "*a pharmacy that engages in compounding*

*medications, including those sold in the animal pharmaceutical industry” (the **2016 Complaint**).*

- a. Olympia received warning letters on February 18, 2014 and February 6, 2016 as well as an investigation report issued on April 13, 2018 from the US Food and Drug Administration (the **FDA**), which highlighted deficient aseptic practices that did not provide adequate protection of sterile drug products, among other deficiencies (the **FDA Warnings**).
- b. Olympia received a further investigation report issued on March 2, 2022 from the FDA, indicating that Olympia had failed to submit accurate reports to the FDA identifying the drugs compounded during the previous six months (the **2022 Report**).
- c. Signature Compounding Pharmacy, formerly located in Orlando, Florida, was subject to an investigation in late 2006 and early 2007 by the Albany County District Attorney’s Office for allegations of the illegal sale of steroids and related drugs for non-therapeutic purposes. Four of the five people who pled guilty to a felony count of a controlled substance are now connected to Olympia in various capacities, including an independent pharmacy consultant, the chief executive officer, director of sales and a veterinary specialist.

### ***The Hearing – The Player***

74. During her oral evidence at the hearing, the Panel learned additional information about the Player. Her evidence was:
  - a. The Player began playing tennis when she was four years old. She developed an interest in tennis from watching older children play at the park. She began playing tennis five hours per day when she was ten years old. She played her first professional tournament when she was 15 years old.
  - b. Her father, Dr. Dorcil has been her coach for the past five years.

- c. The Player has never been registered with the ITF's testing pool, which requires athletes to submit their whereabouts every quarter. Her first and only drug test was at the Event.
- d. The Player could not state with any certainty when she watched her first anti-doping video. She initially stated about two years ago. She then corrected herself and stated that she was 15 years old when she registered for her first professional tournament. She believes she watched the anti-doping videos once or twice and did not recall its length.
- e. The Player does not take any nutritional supplements such as protein powders. She is not an "*avid vitamin taker*" and normally only takes hair, skin and nail growth vitamins in the form of gummies. Her mother buys the vitamins for her.
- f. To ensure the vitamins did not contain any prohibited substances, the Player read the ingredients on the container and she verified them on the ITIA's website.
- g. The Player does not generally take any medications.
- h. The Player complained to her mother on 24 October 2022 that she was feeling tired after practice. Her mother and sister were going to Any Lab for B12 injections, so her mother told her to join them.
- i. The Player described Any Lab as clean and well kept.
- j. The Player was very nervous receiving the Injection, so her mother stayed with her and held her hand.
- k. The Player looked at the syringe and stated the colour of the Injection was red. She did not recall whether the liquid was cloudy or clear.
- l. The Player arrived in Lima, Peru on November 3 or 4, 2022. She was accompanied by her father but not her mother. She did not bring any gummy vitamins or supplements to Peru, nor did she take any vitamins or supplements while in Peru. She did not receive any injections in Peru.

- m. The Player may have taken Motrin (an ibuprofen) while she was in Peru, which she had taken with her.
- n. The Player had never heard of boldenone and did not knowingly take it.
- o. The Player described the Polygraph as an “*very easy process*” because she “*had nothing to hide*”, so she was “*calm and relaxed*” during the examination process.
- p. The Player believes she lost her WTA ranking as a result of the Provisional Suspension. The Player intended to play tennis for as long as she could. If she is suspended for four years, she would give up tennis.
- q. The Player ruled out meat contamination and contamination of her Motrin and supplements as well as someone swapping out the pills in her Motrin container for something else because this would have been noticeable. The Injection had to be the source.

75. [REDACTED] [REDACTED] The Player received the Core Bundle before the start of her cross-examination. During cross-examination, the Player responded as follows:

- a. The ITIA referred the Player to her pre-hearing submissions of 26 April 2023 and in particular, to the supplements listed in them. The Player said that she distinguishes between supplements and vitamins. However, she did not know anything about Country Life Inositol powder, which was listed as the first supplement in her submissions, nor could she answer with any degree of certainty what she took and when. She then reiterated that she is not an avid vitamin taker and would not take vitamins for months. She again stated that she checked ingredients to ensure they did not contain any Prohibited Substances. She added that she did not think the supermarket, where her mother purchases vitamins and Motrin, would carry products containing Prohibited Substances.
- b. The ITIA referred the Player to paragraph 5 of her witness statement. When asked which websites she used to verify ingredients, she initially stated the WTA and then the ITIA. She asked, “*The ITIA do have a list of all the banned substances. Do they not?*” When asked again which websites she uses to verify ingredients, she

responded that she checked the TADP portal. She then stated it “*was wrong to say the WTA*” but “*it was really layman’s terms*”.

- c. The Player confirmed being aware of the risk of contamination in vitamins and supplements. She did not carry out any batch testing for the vitamins and supplements listed in her pre-hearing submissions. She did not download the ITIA App, the TADP App or the US Anti-Doping Agency’s supplement guide. She did not know anything about Global Drug Reference Online. She was uncertain whether she visited the USANA website, which lists supplements certified to be free of substances.
- d. The Player has not spoken to a sports dietician because she relies on her father for advice.
- e. The ITIA referred the Player to the ITIA’s website where it discusses that the most important information to keep on file is the name of the supplement, the brand name and batch number. The Player agreed that she was aware of this advice but “*to her knowledge*” she does not take supplements.
- f. The Player stated that she did research before having the Injection. She checked the Ingredients of the Injection on Any Lab’s website. She also stated that Any Lab had “*great reviews*” and believed the website stated that Any Lab was a “*leading testing site*”. She assumed Any Lab would obtain its product from a reputable source.
- g. The Player did not speak with Dr. Davis despite referring to his conversation with Olympia in her witness statement. She confirmed her lawyer wrote this statement.

76. In response to Panel questions, the Player testified as follows:

- a. The Player said that her parents usually buy Motrin for her. The Player keeps Motrin in her tennis kit bag.
- b. The Player said that she did not consider the possibility that the Motrin was boldenone because Motrin is a reputable brand and in her view, well regulated. She was of the firm belief that the Injection was the source of the boldenone.



- c. The Player did not read Professor Ayotte's report. She claimed to have only received the Core Bundle during the hearing.
- d. The Player said that she told her father before she left for Any Lab that she would be receiving the Injection. His response was, "Okay."
- e. The Player was in Peru for about 11 days. During that time, she did not ask for any medication from her professional tennis friends because she had her own Motrin, but she did not take any while she was there. She had previously accepted pain relief from other "pro girls" but not while in Peru.
- f. The Player did not practice playing at any gymnasiums while in Peru.
- g. The Player did not have any further urine tests or hair analysis since 15 November 2022.
- h. The Player confirmed that it is mainly her mother who usually gives her vitamins.

***Witness – Player's Mother, Mrs Tamaala Dorcil***

77. During evidence when asked by the player's counsel, Mrs Dorcil's evidence was as follows:
- a. Mrs Dorcil has been to Any Lab on numerous occasions. She initially went to Any Lab for pre-diabetes testing because it is a national chain that is reputable, clean and safe.
  - b. Mrs Dorcil has received about five vitamin B12 injections. She suggested the Player receive the Injection because the Player was complaining of fatigue.
  - c. Mrs Dorcil was with the Player, and held her hand, when the Player received the injection. She stated that the colour of the Injection, which was drawn from a vial into a syringe, was red. It looked like the B12 injection she had received previously.
78. During cross-examination, Mrs Dorcil materially responded as follows:

- a. Mrs Dorcil believes that the Player looks at the bottle whenever Mrs Dorcil gives her something to take. Mrs Dorcil accepted that she did not know all the checks the Player does to verify that she is not taking any Prohibited Substances.
  - b. Mrs Dorcil accepted that she does not know what the Player does 24/7 but she believes her daughter.
79. In response to questions from the Panel, Mrs Dorcil's evidence was as follows:
- a. Mrs Dorcil accepted that she sometimes buys Motrin for the Player and the family in a large tub.
  - b. Mrs Dorcil agreed that it "*could happen*" where someone could change the tablets in Motrin container that the Player keeps in her tennis bag, but she was adamant that nobody in the Dorcil family would do that.
  - c. Mrs Dorcil confirmed that the vial containing the Injection had a label, but she did not ask for or receive the duplicate label.
  - d. Mrs Dorcil said that the Player always had Motrin in her tennis bag. She did not give the Player any medications for her to take to Peru.
  - e. Mrs Dorcil said that she believed that the Motrin in the Player's tennis bag was unsealed, as it had already been used, but it had been sealed when purchased.
  - f. While Mrs Dorcil gave evidence that she believed her daughter was careful to check what she was taking and she had observed her daughter looking at labels, it was clear that there had not been any detailed discussions between mother and daughter as to the content of any anti doping training or the steps expected of an athlete under the TADP or World Anti-Doping Code as to checks that should be undertaken to verify the source and nature of any substance taken into her body.

***Witness – Player's Father, Dr Job Dorcil***

80. Dr Dorcil is an orthopedic surgeon with a sub-speciality in spinal surgery.

81. During evidence in chief, Dr. Dorcil said as follows:
- a. Dr Dorcil has been the Player's coach for about five years. He slowed down his medical practice so that he could be more involved with her coaching.
  - b. Dr Dorcil is not a tennis player and has never played but he has self-taught himself tennis.
  - c. Dr Dorcil said that that Any Lab had told him in a phone call that it obtains its medications from Olympia. He contacted Olympia and asked to speak to someone from sales so that he could ask about pharmaceuticals for veterinary medicine. The Olympia representative stated that Olympia used to provide boldenone for veterinary medicine but no longer did so. The representative then stated veterinarians sometimes contact Olympia and make "*such requests*" but they ultimately buy supplements made for humans. Dr Dorcil intends to file a complaint against Olympia but is waiting for the outcome of this hearing.

82. During cross-examination, Dr Dorcil responded as follows:

- a. Dr Dorcil did not know the name or job title of the person whom he spoke to at Any Lab. He did not ask the name or whether Olympia was Any Lab's sole supplier.
- b. Dr Dorcil did not email Any Lab after his call to confirm in writing where Any Lab sources its products or specifically the product given to his daughter.
- c. Dr Dorcil did not ask Any Lab for the identifying number for the injection given to his daughter.
- d. Dr Dorcil stated that "*to the extent that it's possible*" he is with the Player but accepted that he is not with her 24/7. He was adamant in his belief that the Player did not inject herself with steroids and that he believes his daughter.

83. In response to Panel questions, Dr. Dorcil's evidence was as follows:

- a. Dr Dorcil read Professor Ayotte's report. He did not know whether boldenone and vitamin B12 are lipophilic or water soluble. He did not believe that a lay person would

notice a contaminated injection. Only a “*trained eye*” would. He accepted that a substance’s physical properties were what they were.

- b. Dr. Dorcil said that he did not know at the time that the Player was to have the B12 injection. He only found out afterwards. He does not take vitamins himself, but Mrs Dorcil takes a different view. He told us that he believes a healthy and balanced diet provides the nutrition that a person needs. If he had known the Player was leaving the house with Mrs Dorcil to receive the Injection, he would have attempted to stop the Player from doing so. He believes the Player did not need the Injection because she is young healthy woman who maintains a healthy and balanced diet. Vitamin B12 produces red blood cells to help with anemia, but the Player is not anaemic.
- c. Dr Dorcil’s evidence was that he believes that the Player normally travels with Motrin in her tennis bag. Dr. Dorcil agreed that once a container is opened, anything could be put inside of it. He emphasized that “*that level of nefarious behaviour never crosses*” his mind.
- d. Dr Dorcil stated that the Player did not take boldenone in pill form in Peru because she “*doesn’t have the ethics and morals that would allow her to even entertain that possibility*” because he has raised the Player to have the highest moral and ethical standards.
- e. Dr Dorcil stated that the injection was the only event that was different from his family’s normal routine.
- f. Dr Dorcil did not have a recollection of the Player taking Motrin in Peru but she may have done.

### ***Professor Ayotte’s evidence in the hearing***

- 84. Professor Ayotte also gave oral evidence in the hearing in addition to her report and was crossed examined by Mr Jacobs. Key additional evidence was as follows:

- a. Professor Ayotte confirmed that the concentration of boldenone and its metabolite in the Player's A sample is not consistent with eating meat. Meat contaminated with boldenone normally produces a single digit concentration level.
- b. Professor Ayotte was not aware of any situation where ibuprofen was contaminated with boldenone and confirmed she would be surprised if Motrin was ever contaminated with boldenone.
- c. Professor Ayotte agreed that the supplement, Molecular Nutrition Boldione was withdrawn from the market in 2013. She also stated: "*We cannot say it's absolutely impossible to have an oral supplement through the black market.*"
- d. Professor Ayotte confirmed there are no studies comparable to the 2015 study following intra-muscular injection of boldenone. She stated that "*it could be possible*" that a full dose in milligrams of boldenone (not a contamination scenario) received on 24 October 2022 could result in the concentration level found in the Player's A sample. However, she stated that a vitamin B12 injection with boldenone undecylenate would not reach the concentration level found in the Player's A sample. She agreed that she did not see any photographs of the injection nor did she speak to anyone at Any Lab or Olympia.
- e. Professor Ayotte stated that her view was that even one drop of boldenone undecylenate in oil would be spotted in one millilitre of the vitamin B12 either mixed or in the syringe. Vitamin B12 and boldenone undecylenate are not the same colour nor do they have the same texture. Therefore, a lay person would notice that a vitamin B12 injection containing boldenone undecylenate would not look like vitamin B12 at all because the droplet of oil is clearly recognisable. Professor Ayotte was prepared to give the Player a demonstration, but the Player simply wished to know if she saw the Injection, which she did not. She added that it makes no sense to mix vitamin B12 with boldenone undecylenate and is "*extremely unlikely*" based on her understanding of oil and water.

85. In response to Panel questions, Professor Ayotte's evidence was that:

- a. If boldenone is taken orally, the peak of excretion is a few days, but if boldenone undecylenate is injected, the curve of excretion and the peak are unknown. In both scenarios, after the peak, the curve descends and eventually plateaus. Professor Ayotte stated that given the concentration level in the Player's A sample, it was not the end of administration period, that is, in the last phase where the level would have been much lower.
- b. Professor Ayotte agreed that the half-life of boldenone undecylenate injected in horses is about 14 days. Although she agreed that this is "*tangible information*", she clarified that the metabolism in horses is different than humans, so she did not include any veterinary evidence in her report.
- c. As far as she is aware, boldenone undecylenate on the black market ranges from ten milligrams to 300 milligrams but she has not recently done a study of the black market.
- d. Professor Ayotte agreed that the concentration level in the Player's A sample is not likely to be consistent with an injection received 22 days before the urine sample. She added that it seemed to be a recent administration because of the high ratio of boldenone to its metabolite. However, Professor Ayotte was firm that she could conclusively state that it could only have been a recent oral administration based on the reported literature.

## **PROOF OF SOURCE**

### ***Player's submissions***

86. Mr Jacobs invited us to find that the Player had discharged the burden of proof on the basis of the following factors:
  - a. The Player's evidence. We were invited to believe her.
  - b. The Player's parents evidence and that they believed her and also delivered their own truthful evidence.

- c. The result of the Player's polygraph test was negative.
- d. No other potential route canvassed in questions or otherwise (meat contamination, contamination of the ibuprofen taken in Peru, some other drug being present in the tub other than ibuprofen, some other supplement) got close to the 51% and was less likely than contamination of the B12.
- e. Mr Jacobs invited us to take into account the evidence regarding the Olympia Compounding Pharmacy and submitted that it was both open to us and more likely than not that the concatenation of that evidence plus Ms Dorcil's personal account and her parents evidence demonstrated the means through which boldenone must have entered Ms Dorcil system was through the injection on 24 October 2022.
- f. Mr Jacobs asked us to conclude that it was inherently unlikely that either the Player or her father had brought boldenone to Peru, or ventured out in Peru to buy the substance.
- g. Mr Jacobs asked us to discount Professor Ayotte's evidence on the basis that her conclusions discounting the possibility of contamination are based on assumptions, rather than facts, as to the injection itself.
- h. We should not take into account Professor Ayotte's evidence when weighing the evidence about the Olympia compounding pharmacy.

### ***The ITIA's submissions***

87. Ms Potts submitted that we should find the evidential burden not to have been passed. We should note that:
- a. There is no direct evidence of the content of the injection, nor information derived from its serial number which she submitted should have been kept.
  - b. We were invited to draw an inference that no request for that or any other identifying features had been made of Any Lab Test Now and that the lack of record or

searching questions asked by Dr Dorcil should factor in the balance against the Athlete.

- c. There is no statement from the compounder or manufacturer.
- d. The evidence at best was highly circumstantial.
- e. The evidence submitted only shows that some veterinary medicines are compounded by Olympia, not that boldenone undecylenate was on the premises, nor that they manufacture b12 injections.
- f. Dr Davis' report is limited to what it says and we should make inferences because he was not called.
- g. Professor Ayotte gave evidence that not every veterinary product contains boldenone.
- h. We should accept Professor Ayotte's evidence on the science. Professor Ayotte was candid that she could not assume that humans and horses were identical and cautioned as to metabolic outliers, but on the balance of probabilities the test result level and the alleged time frame counted against the likelihood of the injection having been the source.
- i. The Panel should not look at or consider other possibilities for how the substance entered the Player's system.
- j. It is notable that the Player has not done a hair analysis or any other test.

### ***The Player's reply***

88. The Player, through Mr Jacobs, cautioned against several aspects of Ms Potts' suggested approach, in particular (albeit this is not an exhaustive recitation of the entire reply) it was said:
- a. It was an improper submission to suggest we should find against his client on the basis of the absence of a batch number for the injection.



- b. We should not draw too much from the cases where other steps were taken; in some of those cases the Player did not do a polygraph test.

## **OUR DECISION ON PROOF OF SOURCE**

89. We find that the Player has not met the burden of establishing the source for the following reasons.
90. Firstly, we find the Player's account of receiving sufficient boldenone through an injection with vitamin B12 on 24 October 2022 to be highly improbable due to the properties of the substance and what is known (even with appropriate caveats as to the extent of that data) as to the mechanism of absorption and metabolization set out at paragraphs 52-66 above. It is far less than 51% likely on this basis alone that a contaminated injection of B12 given 22 days previously could have resulted in concentrations of boldenone as high as almost 30ng/ml and that the concentrations of boldenone were 10 times higher than its metabolites. It would have required a significant dose at that time period and/or for Ms Dorcil to have metabolised the boldenone in a manner so far unreported in the literature. Any contamination of a B12 injection from a vessel with residue would, instead, have been likely to have resulted in a very low volume in the mixture due to the physical properties of both substances. The level in the Player's urine was around 100 times higher than the total boldenone that could feasibly have been solubilised if a vessel used for the Injection had previously been used for boldenone. Mr Jacobs attempted to suggest that the scenario assessed by Professor Ayotte was only one scenario, but we consider this to be answerable by our second reason.
91. Secondly, even if (which we find highly unlikely) there was such a contamination of the syringe on 24 October 2022, we find it highly unlikely that neither the person administering it, nor Mrs Dorcil would have noticed anything awry. This is because of the amount of boldenone undecylenate which would need have been in that syringe to subsequently produce a concentration of almost 30ng/ml in the Player's urine sample would have needed to have been substantial. Furthermore, the underlying physical and chemical properties of B12 and boldenone undecylenate would have resulted in a two phase solution, in which a visible amount of a yellowish substance would have been

combined with a red solution, which would have been highly likely to have been visible. We particularly note Mrs Dorcil's evidence that the Injection looked red and like the ones she had received previously. We can see why from the parents' perspective, they considered the Injection to be the one different change to routine they were aware of, but that thought is inconsistent with the observations of Mrs Dorcil of that injection on the day it was given.

92. Thirdly, the evidence relating to the Olympia and the Any Lab facility does not, in our view, come close to surmounting the evidential burden required to demonstrate that it was the source of the boldenone in the injection on 24 October 2022. Mr Jacobs candidly accepted that this evidence could not, by itself, establish this. He asked that we take into account that the evidence presented, is, in his words, as much as can be compiled without subpoena power along with the other factors. In our view the evidence, at most shows that:

- a. Individuals previously involved in the Signature Pharmacy scandal (which involved provision of doping to athletes, including prohibited anabolic steroids) now have roles within Olympia including as pharmacists (whether "independent" or otherwise) and as a so called, "veterinary specialist."
- b. Olympia itself has been inspected a number of times by FDA and has received warnings for "*serious deficiencies in practices for producing sterile drug products, which put patients at risk*" and "*producing drugs that violate the FDCA.*" As recently as March of 2022, an FDA Investigation Report concluded that the Olympia Compounding Pharmacy had failed to submit accurate reports.
- c. Olympia has also been inspected by the Department for Health, which observed deficiencies in aseptic technique and inadequate hygiene and garbing (clothing) by not being wholly covered with a sterile gown, and a number of documentation failings. An inspection in 2022 found concerns with environmental monitoring and positive and negative pressure cleanrooms and a concern about the discrepancy in a batch of yellow substance (not said to be boldenone).
- d. While serious, none of the concerns listed in the reports relate to a contamination of injections intended for human use (for example a B12 injection) being contaminated

with veterinary boldenone undecylenate (or indeed any other fat-soluble substance for either human or veterinary use). None of the descriptions in any of the reports suggest that veterinary medications were being prepared alongside those intended for human use, nor the level of contamination which, given the physical and chemical properties of B12 and boldenone undecylenate, would need to have occurred in the present case to result in a vial labelled B12, which contained sufficient sources of boldenone. We would expect that, had the FDA or US Department of Health seen vials of substances for injections well known to be water soluble, containing large phases of oily greasy substances, this would have been likely to have been raised and mentioned specifically in those reports.

- e. Those reports go as far as to suggest that any athlete purchasing supplements or medication should take special care when putting into their body any substance which might have been purchased from such a laboratory. Those reports support the advisability of an athlete asking the healthcare provider, clinic or pharmacy where they purchase the specific substance they will be ingesting from and how they are aware that the supplier is reliable and unadulterated. It is no part of this Player's case that she took those steps. The reports do not establish either a credible mechanism or an evidential basis for concluding that the B12 shot used by Any Lab now, even had it been purchased from Olympia, is more likely than not to have been adulterated with a sufficiently high dose of boldenone to have produced the results in the AAF.
- f. Furthermore, we have considered the account of Dr Dorcil in paragraph 7 of his witness statement and as explained to us in his oral evidence. Even if Dr Dorcil did not specify whether he was a veterinarian and did not use terminology which is only consistent with being a human doctor, the answer alleged to have been given by Olympia, that the company produces supplements for human use and they are sometimes used by veterinarians, does not establish that they make boldenone at all. In fact, the answer does not refer to boldenone. The fact that the lab also denied to either Mr Roberts of Blue line or Dr Davis that they produced boldenone also does not establish that they do.

g. These are factors when taken in the round, with the other evidence, leads us to conclude that the evidence presented by the Player does not reach the burden she is required to meet.

93. Fourthly, the evidence relied on as to the source of the injection used by Any Lab having come from the Olympia at all rests only on a call between Dr Dorcil and an unnamed person at Any Lab who said the pharmacy used them, but not what for. In the same call, Dr Dorcil accepts he did not ask them to check their records for B12 injections being delivered in October 2022, nor to identify in their records the injection given to his daughter. Whilst it is understandable that Dr Dorcil might, following his investigations, have serious doubts as to whether Olympia might tell the truth by telephone, in evidence he identified no basis for having suspicions about whether Any Lab would not tell the truth. Indeed, Mrs Dorcil gave evidence as to why she (and indeed her local Pastor) trusted them.

94. Fifthly, the evidence of Dr Davis does not take us very far. He notably does not say that there is any veterinary product which combines B12 and boldenone, only that he can “rationalise” that it might be helpful if one exists. Moreover, the evidential burden is on the Player. If she wished to put any further reliance in Dr Davis, she should have called him. Mr Jacobs said that the ITIA did not ask to cross examine him, but that is not necessary if, as is the case here, the ITIA do not contest his evidence so far as it goes. It does not go sufficiently far, even if wholly accepted.

95. Sixthly, we do not wholly believe the evidence of the Player to us. In particular (but not exhaustively), we are concerned by the inconsistencies between her evidence orally and in her statement. For example:

a. The Player lists vitamins and supplements in her submissions, but in oral evidence seemed unaware of one of them. Her evidence was hesitant and uncertain.

b. While her statement gave the impression of a person who was diligent and highly engaged with everything she takes and believed that some supplements were necessary for her health, her oral evidence was noticeably more laconic. She was

not able to identify clearly or with any confidence the websites she checked (changing her evidence from a reference to the WTA website, to the TADP portal) and her process amounted in most cases to trusting what her mother bought from the supermarket.

- c. Her written evidence of being an “*avid anti-doping advocate*” was at odds with her lack of memory in oral evidence of her anti-doping training and which videos she watched and when and that she had not downloaded any apps or supplement guides.
- d. Her evidence as to whether her father was aware of the injection before it was given. She said that he was and said “ok.” His evidence was that he only found out afterwards and gave evidence to us that he would have sought to dissuade the Player from having the injection. We prefer Dr Dorcil’s evidence.
- e. The Player also seemed unsettlingly unfamiliar in oral evidence with the contents of her statement (for example what she says Dr Davis said – she said this was from her attorney) and the submissions made on her behalf (which had mentioned a supplement she appeared not to have heard of: Country Life Inositol powder).
- f. The Player also did not appear through her evidence to be particularly engaged in the process. We found it surprising that she had not read Professor Ayotte’s report, which was the evidence filed against her by the ITIA and that she said she did not have the bundle for the hearing.

96. We have additionally taken into account both the polygraph and Ms Dorcil’s evidence as to the polygraph in the manner set out at paragraph 51 above. On this issue we found the Player’s own evidence on the polygraph somewhat unexpected given the way reliance was placed on it. When asked about the polygraph examination her answer stressed how “*easy*” the process had been and that “*it was good... I was calm and relaxed the whole time.*” She accepted that had known she would be asked whether she had intentionally taken boldenone. The answer she gave in her oral evidence suggested that she knew the importance, in terms of what that test would record as indicators of truth, of being calm and relaxed and was proud of her performance during the test. Taken together with her other evidence, while we have considered the polygraph on this basis,

we do not consider that the test done in this case materially assists her. Even if, however, we were to have found it indicative of her truthful account to the questioner during that test, that would have been outweighed by the other evidence considered above.

97. So, turning back to the factors listed by Mr Jacobs:
- a. The Player's evidence. We were invited to believe her, but we do not wholly believe her evidence. We did not find her a wholly credible witness.
  - b. The Player's parents' evidence and that they believed her and also delivered their own truthful evidence. Evidence of another's belief in a persons' truthfulness is not evidence that the person has told the truth.
  - c. The polygraph test. We have considered this so far as it goes, but this is outbalanced by Ms Dorcil's oral evidence about it and the other factors.
  - d. That no other potential route canvassed in questions or otherwise (meat contamination, contamination of the ibuprofen taken in Peru, some other drug being present in the tub other than ibuprofen, some other supplement) got close to the 51% and was less likely than contamination of the B12. We do not accept that no other route is more likely than not than the B12 injection to have led to the ingestion of boldenone. Looking at the result by itself in isolation, that result is more consistent with oral ingestion in tablet form a small number of days before the event. It is not for us to have to determine what the most likely route of ingestion is. The existence of a more likely route is a factor we can take into account when assessing the Player's evidence as a whole as to whether she has proved the route.
  - e. Mr Jacobs invited us to take into account the evidence regarding the Olympia, but we do not accept that assists for the reasons set out above.
  - f. Mr Jacobs asked us to conclude that it was inherently unlikely that either Ms Dorcil or her father had brought boldenone to Peru or ventured out in Peru to buy the substance. We make it clear that we do not believe on the evidence presented to us that Dr Dorcil transported or supplied the substance. We do not need to find how it could have entered the Player's system, whether she transported it, whether any of

her pro girl mates supplied it or whether she obtained it through other means. The TADP places the burden on the Player to show the source.

- g. We consider Professor Ayotte to have been truthful and fair as a witness. Any assessment of an Athlete's account of how the substance entered her will necessarily involve the making of assumptions as to how this could have occurred and what conditions, given the known properties, would need to have been present. Professor Ayotte was clear about what in her evidence was assumption and what was primary evidence. Her evidence as to the appearance and miscibility of the boldenone undecylenate and B12 was clearly both based on literature and primary evidence of observation.
- h. Professor Ayotte entirely correctly did not give evidence about the Olympia, as indeed that would fall outside of her expertise. Therefore, the Player's submission (that we should not take into account Professor Ayotte's evidence when weighing the evidence about the Olympia compounding pharmacy) does not assist her.

98. Therefore, we find that the Player has not proved the source of the boldenone found in her urine on 15 November 2022.

## ***INTENTIONALITY WITHOUT PROOF OF SOURCE***

### ***Submissions***

- 99. The Player also sought to establish lack of intention without proving source, as an alternative submission. Her submissions on this were based mainly on case law (especially the **Jack** and **Schoeman** judgments), and the credibility of her own evidence. Many of the factors relied on have also been considered above in our reasoning in relation to proof of source.
- 100. The Player placed greatest reliance on CAS 2011/A/2495 *FINA v. César Augusto Cielo Filho & CBDA ("Cielo")* especially at [37], CAS 2020/A/7579 *World Anti-Doping Agency v. Swimming Australia, Sport Integrity Australia & Shayna Jack* especially at [101]-[102]; CAS/ 2020/ A/7083 *WADA and FINA v Roland Schoeman* at [88], where the objective

and subjective elements which assisted Mr Schoeman discharge the burden in that case and also at [100]. Mr Jacobs notes that the fact that Mr Schoeman had tested all 31 of his supplements was, in reality a double-edged factor: why was he even taking 31 supplements? Far better, in his submission to be like Ms Dorcil and take hardly any. He also notes that this was Ms Dorcil's first doping test and she isn't in the testing pool, so wouldn't have been able to show before and after tests in the same way. We accept she wouldn't have been able to show before, but she also could, in principle have taken her own tests after, as some athletes have in the cases cited.

101. The ITIA placed greater weight on CAS 2016/A/4534 *Maurico Fiol Villanueva v. Fédération Internationale de Natation (FINA)*, CAS 2016/A/4676 *Arijan Ademi v. Union of European Football Associations*, CAS 2017/ A/5016 *Abdelrahman v Egyptian Anti Doping Organisation* and CAS 2020/A/6978 *Andrea Iannone v. FIM* especially at [143] where CAS stated;

*“it is clear that the athlete cannot rely on simple protestations of innocence or mere speculation as to what must have happened but must instead adduce concrete and persuasive evidence establishing, on a balance of probabilities, a lack of intent”*

102. Ms Potts sought to argue that the Player's evidence never got above “speculation” or “protestation” into credible evidence. We consider the evidence of the Player's parents did go beyond mere “protestation” but that the content of that evidence does not persuade us on the balance of probabilities, especially when considered with the sensible caveats with which it was made, and the other evidence.
103. Mr Jacobs replied on those cases cited by the ITIA and also highlighted further factual features of **Jack**, **Schoeman** and **Cielo**, which we have considered carefully. In particular, he noted that **Iannone** had hair analysis but no polygraph, in **Jack** the substance was not highly communicable (as it had been in **Villaneuva**) and Mr Jacobs took us to the paragraphs in **Schoeman** about education and its relevance and that the approach of the athlete in that case, who had not had much education but accepted the ADRV is similar to the approach Ms Dorcil has taken.



### ***Decision on lack of intention without proof of source***

104. None of these cases have identical facts to the present and, as in the **Schoeman** case we have approached the exercise both by looking at the objective factors and the subjective factors, but not conducting an identical analysis to that in the case of CAS 2013/A/3327 **Cilic**, because that considered a different issue.

105. As to the subjective factors, in none of the cases where this defence has succeeded has the Panel disbelieved any aspect of the athlete's evidence. In all cases the athlete gave a favourable impression and they were believed. This factor, by itself, is sufficient to mean that this route of demonstrating lack of intention is not available to the Player.

106. The Panel further noted that the Player did not keep the name of the supplements, the brand names and batch numbers, despite being aware of the ITIA's website indicating that this is the most important information to keep on file. This is also highlighted in the **Jack** decision where the CAS hearing panel held at paragraph 107:

*...As with after-the-fact attempts to reconstitute the intake of nourishment and health products, such supposed evidence of the lack of culpable intent is likely to suffer from an evident deficit of credibility. There is a problem rewarding athletes for the insistence of their efforts at exculpation, and in other cases observing that athletes 'could have done more'. **The quality and consistency of the records kept prior to the positive test are more indicative of seriousness in seeking to avoid non-compliance with the Code.** [Emphasis is added.]*

107. The Player did not submit to any subsequent urine test or hair analysis after learning of the positive result. It is unclear what the private investigator (who was not called) did for the Player except for his one discussion with an Olympia representative.

108. The Panel did not find the submissions on the 2016 Complaint, the FDA Warnings and the 2022 Report particularly helpful because they do not come close to establishing that Olympia compounded boldenone at all or whether there was ever any contamination of injection vials found. The Player also asked the Panel to consider that four people who were previously accused of the illegal sale of steroids and related drugs for non-therapeutic purposes in 2006 and 2007 are now connected to Olympia. There is a considerable leap from individuals who pled guilty to a felony count of a controlled

substance approximately 15 years ago who now hold various roles within Olympia, to Olympia being the source of boldenone in the injection. The Panel relies on Professor Ayotte's testimony, including that mixing boldenone undecylenate with vitamin B12 is "*extremely unlikely*" and the Player's failure to establish that Olympia had boldenone on its premises.

109. The Player's case is further distinguishable from case law cited by the Parties as follows:

- a. In the **Jack** decision, the prohibited substance in the athlete's system was ligandrol, which is highly communicable, so the athlete could have been exposed in many ways, including a public pool or gym. The hearing panel in **Jack** took this into account. Boldenone, however, is not highly communicable and is not permitted for human use. Furthermore, in **Jack**, the athlete had been tested many times, including around the time of sample collection. All of these test results were negative. The urine test at the Event was the first and only urine test that the Player has had.
- b. In the **Schoeman** decision, the hearing panel took the following factors into consideration: the athlete had undertaken tests immediately preceding and after the doping test that led to the AAF, all of which were negative; there was a considerable delay in notifying the athlete of his AAF, which the Panel considered may have hindered his efforts to identify the source; and the athlete made extensive efforts to identify the source, including testing 31 supplements. None of these objective factors are present in the Player's case.
- c. In the **Ademi** decision, the athlete had a small concentration of the prohibited substance, stanozolol in his system. The hearing panel considered that the supplement, Megamin, that the athlete took could have been the source of the Prohibited Substance. The container of Megamin had four yellow and 17 white capsules. The laboratory found that the none of the yellow capsules had stanozolol whereas stanozolol was detected in the white capsules. The laboratory, however, remarked, that "*[t]he test results of the white capsules could not be verified by the analysis of an originally packed and sealed and independently obtained product.*" The laboratory pulled apart the yellow and white capsules to compare the consistency of the powder in them. Both had the same consistency. Although the

laboratory results were inconclusive, the hearing panel considered that it would have been a “*complex plan*” for the athlete to manipulate the supplements so that they had the same consistency. None of these objective factors are present in the Player’s case.

110. As for the Polygraph, our considerations are set out above at paragraphs 51 and 83.

111. Therefore, we find that the Player comes no where near close to establishing a lack of intention (without establishing proof of source).

### ***Fault-Related Reductions***

112. Since the Player did not prove the source and that the breach was not intentional, the Panel does not have to consider the fault-related reductions of No (Significant) Fault or Negligence under Articles 10.5 or 10.6 of the TADP. Accordingly, as we are comfortably satisfied that the ADRVs have occurred (and indeed have been admitted by the Player) and that none of the defences relied on have been established, that the relevant period of prohibition is four years.

### **Disqualifications**

113. For reasons of ensuring a level playing field, the Panel disqualifies the Player’s individual results with the consequent loss of ranking points and prize money under Articles 9.1 and 10.10 of the TADP at the following tournaments:

- a. 14 November 2022, ITF World Tennis Tour W15, Lima, Peru (2nd round);
- b. 15 November 2022, ITF World Tennis Tour W15, Lima, Peru (3rd round);
- c. 22-23, 25 November 2022, ITF World Tennis Tour W15, Santo Domingo, Dominican Republic;
- d. 30 November 2022, ITF World Tennis Tour W15, Santo Domingo, Dominican Republic; and

e. 11 and 12 January 2023 ITF Tour, Martinique, France.

### Other Consequential

114. The ITIA indicated that it may wish to apply for costs. The parties agreed that no submissions needed to be made in the hearing, but any application should be made in 14 days.
115. The Player's counsel made outline representations as to the inappropriateness of such an application on the facts of this case. In his submission, such an application would, in his experience, be without precedent and would be disproportionate. If an application is made following the hearing, and those remain the extent of his submissions, he need not incur the costs of repeating them. The Player would, however, be granted an opportunity to make representations before a decision is made if she wished to make any further submissions.

### ORDERS

116. The Panel orders that:
- a. The Player is suspended for a period of **four (4) years**. The period of Provisional Suspension, effective from 13 January 2023 is credited against the period of Ineligibility imposed in this decision. Therefore, the Player will be ineligible from 13 January 2023 until 23:59 on **12 January 2027**.
  - b. That her results be disqualified from matches played on 14, 15, 22-23, 25 and 30 November 2022 and 11 and 12 January 2023.
  - c. While serving a period of Ineligibility, the Player may not participate in any capacity in any covered event, event, competition or activity (other than authorised anti-doping education or rehabilitation programs) authorised, organised, sanctioned by the ITF, the WTA, any National Association or member of a National Association, or any Signatory, Signatory's member organisation, or club or member organisation of

that Signatory's member organisation; any event or competition authorised or organised by any professional league or any international or national-level event or competition organisation; or any elite or national-level sporting activity funded by a governmental agency (Article 10.14.1 of the TADP).

- d. If the Player breaches the prohibition against participation during Ineligibility, any results she obtains during such participation will be disqualified and a new period of
- e. Ineligibility equal in length up to the original period of Ineligibility will be added to the end of the original period of Ineligibility (Article 10.14.7 of the TADP).

117. This decision is effective from the date of written notification to the Player and the ITIA.

## **APPEAL**

118. In accordance with Article 13.8 of the TADP, the Parties may appeal this decision by submitting an appeal with the Court of Arbitration for Sport (**CAS**), located at Palais de Beaulieu Av. des Bergières 10, CH-1004 Lausanne, Switzerland (procedures@tas-cas.org within twenty-one (21) days of receipt of this decision. Furthermore, the respective NADO, and WADA may appeal the decision with CAS within the timeframes set out in Article 13.8 of the TADP.

119. Any party wishing to make an application for costs must do so within 14 days from the date of written notification of this decision following which the Chair will make directions permitting representations (if any further are to be made) to be submitted with the applicant having a brief right of reply within a short period.

## **CONCLUSION**

120. The Panel thanks the Panel Secretariat for their helpful administration of this matter, to both counsel who presented their arguments clearly, concisely and cogently and to all who have given evidence to us. We have the parties' consent to deliver this decision shortly after 14 days from the date of the hearing.



KATHERINE APPS KC (Chair)

On behalf of the Independent Panel

6 July 2023

