

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)  
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

IN THE MATTER OF AN ARBITRATION UNDER THE CANADIAN ANTI-DOPING  
PROGRAM

BETWEEN:

SDRCC DT 09-0095  
(DOPING TRIBUNAL)

CANADIAN CENTRE FOR ETHICS IN SPORT  
(CCES)  
CANADIAN AMATEUR BOXING ASSOCIATION  
(CABA)

AND

AMANDA GALLE  
ATHLETE

AND

GOVERNMENT OF CANADA  
WORLD ANTI-DOPING AGENCY (WADA)  
OBSERVERS

BEFORE:

JANE H. DEVLIN

ARBITRATOR

REPRESENTATIVES

FOR THE CCES:

ROBERT C. MORROW

FOR CABA:

ROBERT G. CRETE

FOR THE ATHLETE:

WILLIAM J. HAYTER

## INTRODUCTION

This award concerns an anti-doping rule violation under the Canadian Anti-Doping Program (CADP). Amanda Galle is a member of CABA and was subject to in-competition doping control on January 24 and February 28, 2009. The certificate of analysis relating to the urine sample provided by Ms. Galle on January 24<sup>th</sup> is dated February 9<sup>th</sup> and indicates an adverse analytical finding for the presence of nandrolone or precursors at a level of 462ng/mL. The certificate of analysis for the sample provided by Ms. Galle on February 28<sup>th</sup> is dated March 19<sup>th</sup> and indicates an adverse analytical finding for the presence of nandrolone or precursors at a level of 18 ng/mL. Nandrolone above the threshold level of 2 ng/mL is a prohibited substance on the WADA Prohibited List.

An affidavit sworn by Anne Brown, the General Manager, Ethics and Anti-Doping Services for the CCES, indicates that as the doping control process on February 28<sup>th</sup> took place before the assertion of the first anti-doping rule violation on March 9<sup>th</sup>, the CCES is not alleging a second anti-doping rule violation in this case. Accordingly, Mr. Morrow, on behalf of the CCES, asked that I consider the two adverse analytical findings together.

Given the presence of nandrolone or precursors above the threshold level in the samples provided by Ms. Galle, it was acknowledged that an anti-doping rule

violation occurred. Under Rule 7.38, unless certain conditions are met, the sanction for a first violation is two years of ineligibility from sport. Mr. Morrow advised that the CCES was not taking the position that the sanction ought to be increased based on aggravating circumstances under 7.49 of the CADP and Mr. Hayter, on behalf of Ms. Galle, advised that she was not claiming that the sanction ought to be eliminated under Rule 7.44 because there was no fault or negligence on her part. Accordingly, there are two issues to be determined. The first issue is whether the two-year period of ineligibility ought to be reduced under Rule 7.45 because Ms. Galle bears no significant fault or negligence in relation to the violation. The second issue concerns the commencement date of the ineligibility period.

## **BACKGROUND**

Ms. Galle is almost 20 years of age. She lives at home with her parents in Mississauga, Ontario and is currently enrolled in an Early Childhood Education Program at Ryerson University. She first became involved in marshall arts at the age of seven when she began attending the All Canadian Marshall Arts Academy where she was coached by Vito Brancaccio. At age 11, Ms. Galle began coaching others and now has her third degree black belt in karate. When Ms. Galle was 14, she began training in boxing for which Mr. Brancaccio was also her coach and in 2004, she competed in her first bout. By the summer of 2008, Ms. Galle had competed in six bouts.

## EVENTS LEADING TO THE VIOLATION

In the fall of 2008, Ms. Galle returned to Ryerson for the second year of her Early Childhood Education Program. She attended classes during the day, following which she taught karate and trained in boxing from 8:00 p.m. to 11:00 p.m. in the evening. She then returned home to complete her course work. Ms. Galle testified that at the time, she felt run down, sluggish and overwhelmed by her schedule. As a result, she spoke to other athletes at the marshall arts academy where she trained and they suggested that she take vitamins B6 and B12 to boost her energy and strengthen her immune system. Ms. Galle explained that she was trying to avoid becoming ill. She also testified that she asked Jason Pereira, a friend of Mr. Brancaccio whom she coaches in marshall arts, to do some research into the use of vitamins online. Mr. Pereira later told Ms. Galle that the use of vitamins would not be a problem.

Ms. Galle testified that in late September, 2008, she approached Valerio Moscariello, who was both a friend of Mr. Brancaccio and a family friend for seven years. Ms. Galle told Mr. Moscariello that she wanted to take vitamins B6 and B12 and asked if he would administer the injections and act as her conditioning coach. Mr. Moscariello agreed. Ms. Galle testified that she decided to take the vitamins by injection because Mr. Pereira told her that they would be faster acting than if they were taken orally. Ms. Galle evidently asked Mr. Moscariello to administer the injections because she doesn't like needles. Up to that time, Mr. Moscariello had given Ms. Galle tips on conditioning but had not been formally involved in her training.

Ms. Galle agreed that at the time she approached Mr. Moscariello, she knew that he was a bodybuilder and was also aware of a connection between bodybuilding and the use of steroids. However, she did not believe that Mr. Moscariello used steroids. According to Ms. Galle, he was not competing at the time and although he was fit, he did not appear to be oversized. Ms. Galle acknowledged that she did not ask Mr. Moscariello whether or not he used steroids. She also testified that she was not concerned about retaining a bodybuilder as a conditioning coach because she controlled what went into her body. She testified, as well, that if Mr. Moscariello had pressured her to take steroids, she would have ended her association with him. Ms. Galle was aware that some athletes used steroids to enhance their performance and testified that she had no intention of doing so.

As Mr. Moscariello had been a family friend for many years, Ms. Galle did not make any inquiries into his background. Specifically, she did not ask if he had a criminal record and testified that she would not have asked that question of anyone. Documentation introduced by the CCES from the United States District Court of Nevada indicates that in 2005, Mr. Moscariello was charged with Possession of a Controlled Substance with Intent to Distribute. In August, 2005, he entered a plea to the felony offence and admitted to unlawfully possessing 27 units (270 ccs) of anabolic steroids, schedule 3 controlled substances.

Ms. Galle testified that in early October, 2008, Mr. Moscariello developed a conditioning program for her and they met at the marshall arts academy where she trained to go over the program. In mid-October, Ms Galle began attending at Mr. Moscariello's home on a bi-weekly basis for injections of vitamins B6 and B12. The vitamins were injected into a muscle in the upper buttocks and Ms. Galle testified that for privacy reasons, she preferred to have the injections at Mr. Moscariello's home where he had an office in the basement. She testified that at the marshall arts academy, instructors often walked in and out of the office. Some time in October, Ms. Galle competed in the provincial boxing championships and because her opponent did not make weight, she qualified for the national championships to be held in early 2009.

Ms. Galle testified that Mr. Moscariello gave her vitamin injections at his home on two occasions in each of the months of October, November and December. She explained that the vitamin B6 and vitamin B12 were in separate vials and that the vials were different in size and shape. She also testified that on each occasion, she watched Mr. Moscariello remove each vial from a box with her name on it and she checked the label on each vial. She then watched Mr. Moscariello draw each vitamin from the vial into a single syringe. Vitamin B6 is clear in colour whereas vitamin B12 is red and Ms. Galle testified that the combined substance was pinkish in colour. Ms. Galle also actually watched Mr. Moscariello administer the injection.

Ms. Galle next attended at Mr. Moscariello's home for an injection on January 14, 2009 and before setting out her evidence regarding the events of that date,

it is appropriate to set out Mr. Moscariello's description of what occurred, which is contained in a sworn declaration which Ms. Galle submitted to the CCES in early March, 2009. The declaration was tendered in evidence for the truth of its contents and the parties did not require Mr. Moscariello to attend the hearing for purposes of cross-examination.

In his declaration, Mr. Moscariello stated that while he was waiting for Ms. Galle to arrive at his home on January 14<sup>th</sup> for her bi-weekly injection, he was preparing not only her injection but also an injection for himself of deca-durabolin, which he used personally in his training as a bodybuilder. The evidence indicates that deca-durabolin is a common oil-based preparation of nandrolone. According to Mr. Moscariello, he drew his dose of deca-durabolin into one syringe and drew vitamin B6 into another syringe for Ms. Galle and placed the syringes on his desk. At that time, he realized that he had left the vial of vitamin B12 in his storage room and while he was retrieving the vial, Ms. Galle arrived at his house.

Mr. Moscariello stated that he and Ms. Galle then proceeded to his office and were discussing her training schedule for the upcoming week. According to Mr. Moscariello, he reached down and grabbed what he thought was Ms. Galle's syringe. He acknowledged that he ought to have been more careful because vitamin B6 and deca-durabolin are both clear in colour but at the time, he and Ms. Galle were talking and he was paying little attention and thought nothing of it. He then drew the vitamin B12 into the syringe for Ms. Galle and administered her injection.

Mr. Moscariello stated that after Ms. Galle left his house on January 14<sup>th</sup>, he went to inject himself with deca-durabolin and noticed as he pressed it that it wasn't an oil-based liquid. According to Mr. Moscariello, at that point, he realized that he had injected Ms. Galle with the wrong syringe and as a result, was very upset and angry with himself. Although Mr. Moscariello knew that Ms. Galle was training, he believed that the national championships were months away. He decided not to tell her about the error because he felt that it would worry her unnecessarily and distract her from her training. Mr. Moscariello believed that the drug would be out of Ms. Galle's system by the time of the national championships.

Returning then to Ms. Galle's evidence regarding the events of January 14<sup>th</sup>, she testified that when she called Mr. Moscariello to indicate that she was on her way to his house for her injection, he told her that he was in a rush but that he would have time to meet with her. She testified that on her arrival, she and Mr. Moscariello proceeded to his office where she saw a syringe on his desk. Beside the syringe was a box with her name of it and a vial with vitamin B6 on the label. Ms. Galle assumed that Mr. Moscariello had drawn the vitamin B6 into the syringe before she arrived. She acknowledged that she did not ask him why he had done so. She knew that he was pressed for time.

Ms. Galle testified that Mr. Moscariello then proceeded to his storage room to retrieve the vial of vitamin B12 and when he returned, she watched him draw vitamin B12 into the syringe from the vial. Mr. Moscariello then administered the

injection and as on other occasions, the substance was pinkish in colour. Ms. Galle testified that she did not see a second syringe on Mr. Moscariello's desk and that there were some papers on the desk at the time.

In January, 2009, Ms. Galle competed in the Senior Canadian Championships in Trois Rivieres, Quebec and on January 24<sup>th</sup> was subject to in-competition doping control. On the doping control form, in the space provided for athletes to list prescription and non-prescription medication and nutritional supplements taken in the past ten days, Ms. Galle listed multi-vitamins. As noted previously, the certificate of analysis relating to the sample provided by Ms. Galle on January 24<sup>th</sup> indicates an adverse analytical finding for the presence of nandrolone or precursors at a level of 462 ng/mL.

On February 17<sup>th</sup>, Ms. Galle received a message to contact CABA and when she returned the call, she spoke to Robert Crete, the Executive Director. Mr. Crete advised Ms. Galle of the results of the analysis of the sample she provided on January 24<sup>th</sup>. Ms. Galle testified that she was shocked, scared and confused. She also testified that at the time, she was not familiar with nandrolone and did not even know how to pronounce it. She testified, as well, that as she was scheduled to compete in Edmonton in late February, she asked Mr. Crete whether she could do so. Mr. Crete advised Ms. Galle that she could continue to compete until she was told otherwise. Ms. Galle testified that she was not told that she could be prejudiced if she were to compete in Edmonton.

Ms. Galle acknowledged receiving a copy of a letter from the CCES dated February 17<sup>th</sup> with regard to the adverse analytical finding and as she could think of no explanation for the test result, she testified that Mr. Brancaccio attempted to contact Mr. Moscariello. He was out of the country at the time and returned late on the evening of February 19<sup>th</sup>. Ms. Galle met with him on February 20<sup>th</sup> and she testified that at that time, Mr. Moscariello told her that he had mistakenly injected her with deca-durabolin on January 14<sup>th</sup>. Mr. Brancaccio informed her that it was a banned substance.

At Ms. Galle's request, Mr. Pereira subsequently conducted research online to determine the clearance rate for nandrolone. According to Ms. Galle, Mr. Pereira advised her that if a cycle of nandrolone were taken, it could remain in a person's system for six months or less. It was Ms. Galle's understanding that a cycle involved multiple doses and as she believed that Mr. Moscariello had injected her with only a small amount of nandrolone in error, she did not think that the information applied to her.

Ms. Galle competed at the Canadian Junior National Championships and the final team selection in Edmonton in late February, 2009 and as a result, was selected to the national team. On February 28<sup>th</sup>, she was subject to in-competition doping control and in the space provided on the doping control form to list prescription and non-prescription medication and nutritional supplements taken in the past ten days, Ms. Galle listed Women's One a Day, a multi-vitamin, and vitamins B6 and B12. She testified that she did not list nandrolone on the form because she didn't know if it was

still in her system and it had not been administered in the ten days prior to the competition. As noted previously, the certificate of analysis relating to the sample provided by Ms. Galle on February 28<sup>th</sup> indicates an adverse analytical finding for the presence of nandrolone or precursors at a level of 18 ng/mL.

Ms. Galle testified that she did not intend to take steroids to enhance her performance. She also testified that when she competed in the provincial championships in October, 2008, she was not provided with any information or documentation on doping by the CCES, nor was she made aware of the CADP. Similarly, she was not provided with any information regarding doping when she competed at the national championships in January and February, 2009. Ms. Galle testified that had she been told that she could be prejudiced by associating with Mr. Moscariello, she would not have done so.

Ms. Galle acknowledged that prior to January 14, 2009, she was not aware of her responsibilities as an athlete competing at the provincial and national levels and described herself as inexperienced. She also testified that when she became a member of CABA, she was not given any documentation and only recently became aware of its Code of Conduct. While she also acknowledged that she made no inquiries regarding the rules applicable to her as an elite athlete, she testified that she was not provided with advice or direction, nor was she informed of the rules. She testified that she relied on Mr. Brancaccio, Mr. Moscariello and Mr. Pereira. Ms. Galle agreed, however, that she was aware that she was required to compete drug free.

Ms. Galle testified that she wants to represent Canada at the Olympic Games in London in 2012 and that in order to do so, she would have to be a member of the 2011 national team. The qualifying matches for the team will be held in January and February, 2011 and Ms. Galle testified that if she were to begin serving a two year period of ineligibility in the spring of 2009, she would not be in a position to qualify for the Olympics.

On March 25, 2009, after the anti-doping rule violation had been asserted and the CCES had issued a further letter regarding the second adverse analytical finding, Mr. Morrow wrote to Professor Christiane Ayotte, the Director of the WADA-accredited laboratory where the analysis of Ms. Galle's samples was carried out. In his letter, Mr. Morrow provided a brief outline of Ms. Galle's explanation for the initial adverse analytical finding and asked Professor Ayotte for her opinion regarding the viability or plausibility of the explanation, given for the results contained in the certificate of analysis. He also asked if she could provide an opinion as to whether the results of the second sample analysis were related to a prior injection of nandrolone, indicative of more recent use, or could be explained by some other means.

Professor Ayotte responded in a letter dated March 26<sup>th</sup> in which she advised that the presence of 19-NA, being the main metabolite of nandrolone, at the levels found in Ms. Galle's samples was a sign of past use. She also advised that it was not possible to determine the nature of the preparation, the dosage, the route or timing of the administration or administrations. She advised, as well, that the results

could be due to the administration of deca-durabolin ten days before the first test but could also be obtained with repeated oral administrations.

## **THE VIOLATION**

As indicated at the outset, in view of the presence of nandrolone or precursors above the threshold level in the samples provided by Ms. Galle on January 24 and February 28, 2009, it was acknowledged that an anti-doping rule violation occurred. In this regard, Rule 7.23 of the CADP provides that the presence of a prohibited substance or its metabolites or markers in an athlete's bodily sample is an anti-doping rule violation. Rule 7.24 provides that it is each athlete's personal duty to ensure that no prohibited substance enters his or her body. Rule 7.24 also provides that athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their samples and it is not necessary that intent, fault, negligence or knowing use on the athlete's part be demonstrated in order to establish an anti-doping rule violation.

## **THE APPROPRIATE SANCTION**

Rule 7.38 of the CADP provides that unless certain conditions are met, the period of ineligibility for a first violation of Rule 7.23-7.27 (Presence) shall be two years of ineligibility from sport. Among the conditions referred to in Rule 7.38 are those for eliminating or reducing the period of ineligibility based on exceptional circumstances

under Rules 7.44 and 7.45. In this case, it was not suggested that Ms. Galle bears no fault of negligence in relation to the violation and accordingly, Rule 7.44 has no application. However, Mr. Hayter submitted that Ms. Galle bears no significant fault or negligence and that in the circumstances, the period of ineligibility ought to be reduced to one year. Rule 7.45 provides as follows:

### **No Significant Fault or Negligence**

7.45 With the exception of an anti-doping rule violation involving Rule 7.32 (Athlete Availability, Whereabouts Information and Missed Tests) and Rule 7.42-7.43 (Specified Substances), if an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Significant Fault or Negligence*, then the period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one-half of the period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this section may be no less than eight (8) years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Sample* in violation of Rule 7.23-7.27 (Presence), the Athlete must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* reduced.

The term “no significant fault or negligence” is defined in the CADP glossary and as the definition includes reference to the term “no fault or negligence”, both definitions are set out below:

#### “No significant fault or negligence”

The Athlete’s establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault or Negligence*, was not significant in relationship to the anti-doping rule violation.

#### “No fault or negligence”

The *Athlete's* establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had *Used* or been administered the *Prohibited Substance* or *Prohibited Method*.

As noted in *CCES, BCS v. Despres* SDRCC DT 07-0071 (January 31, 2008) and other decisions, the provisions of the CADP dealing with no fault or negligence and no significant fault or negligence correspond to Articles of the WADA Code. Rule 1.32 of the CADP provides that the Code and International Standards, including the comments, are a source of interpretation for the Program. The commentary to Articles 10.5.1 and 10.5.2 the WADA Code, which deal with no fault or negligence and no significant fault or negligence, specify that the Articles "are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases". The commentary to these Articles also includes the following:

To illustrate the operation of Article 10.5.1, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to which they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of

the positive test was contamination in a common multi-vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care is not taking other nutritional supplements.) For purposes of assessing the Athlete's or other Person's fault under Articles 10.5.1. and 10.5.2, the evidence considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete has only a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article.

As noted above, in order to have the two-year period of ineligibility from sport reduced under Rule 7.45 of the CADP, an Athlete must establish that he or she bears no significant fault or negligence in relation to the violation. The Athlete must also establish how the prohibited substance entered his or her system. With regard to this latter requirement, Mr. Moscariello's description of the events of January 14, 2009 was not challenged in this case and, accordingly, I find that nandrolone entered Ms. Galle's system as a result of an injection of deca-durabolin administered by Mr. Moscariello that day. In his declaration, Mr. Moscariello stated that he administered the drug to Ms. Galle because he mistakenly grabbed a syringe that he had prepared for himself containing deca-durabolin, rather than a syringe containing vitamin B6, which he had prepared for Ms. Galle. Although Mr. Moscariello realized his error after Ms. Galle left his house on January 14<sup>th</sup>, he decided not to tell her about the error because he didn't want to worry her unnecessarily and distract her from her training. Mr. Moscariello thought that the national boxing championships were some months away and that the drug would be out of Ms. Galle's system by that time.

Ms. Galle was subject to in-competition doping control on January 24<sup>th</sup> and testified that she first learned of the results of the sample analysis when she spoke with Mr. Crete on February 17<sup>th</sup>. Thereafter, on February 20<sup>th</sup>, Mr. Moscariello told Ms. Galle that he had mistakenly injected her with deca-durabolin on January 14<sup>th</sup>. Ms. Galle testified that she did not intend to take steroids to enhance her performance. She also described herself as an inexperienced athlete and testified that she was not provided with information or documentation regarding anti-doping. She testified, as well, that at the time the error occurred, she was not familiar with the CADP, nor was she was aware of her responsibilities as an elite athlete.

The CADP imposes obligations on the CCES and on sports organizations to provide anti-doping information and education programs and information and education clearly play an important role in promoting drug-free sport. At the same time, athletes have a responsibility to inform themselves of the rules applicable to the sports activities in which they participate and the CADP requires them to have knowledge of and comply with all applicable anti-doping policies. CABA adopted the current CADP on January 22, 2009 and as a member of CABA, Ms. Galle is responsible for meeting its requirements.

Although Ms. Galle testified that at the time of the events in question, she was not familiar with the provisions of the CADP, she acknowledged that she was aware that she was required to compete drug free. She also understood that caution had to be exercised with regard to substances entering her body. When other athletes

suggested that she take vitamins B6 and B12, she asked Mr. Pereira to conduct research online to ensure that the use of vitamins was appropriate.

In late September, 2008, Ms. Galle approached Mr. Moscariello to act as her conditioning coach and to administer injections of vitamins B6 and B12. Although Mr. Moscariello had been a family friend of many years, Ms. Galle was evidently not aware of his conviction in 2005 and, in my view, it is not surprising that she did not ask whether he had a criminal record. Nevertheless, she knew that he was a bodybuilder and she was also aware of a connection between bodybuilding and the use of steroids. While Ms. Galle did not believe that Mr. Moscariello used steroids, in circumstances where he would be administering injections in his home, I find it significant that she made no inquiry of any kind regarding his use of steroids.

The evidence also indicates that on each occasion when Ms. Galle went to Mr. Moscariello's home for vitamin injections in October, November and December, 2008, she watched him remove each vial from a box with her name on it. She also inspected the label on each vial and watched Mr. Moscariello draw vitamin B6 from one vial and vitamin B12 from the other. As well, she watched him actually administer the injection. This procedure on her part demonstrates a level of vigilance to ensure that no errors occurred and that she was actually injected with the appropriate vitamins. In these circumstances, Mr. Hayter submitted that Ms. Galle's failure to follow a similar procedure on January 14, 2009 may have been negligent but did not amount to significant fault or negligence.

According to Ms. Galle, when she arrived at Mr. Moscariello's home on January 14<sup>th</sup>, there was a syringe containing a clear liquid on the desk in his office. The syringe was beside a vial labelled vitamin B6 and a box with her name on it. Based on the proximity of the vial and the box to the syringe, Ms. Galle assumed that the syringe contained vitamin B6 and that Mr. Moscariello had prepared the syringe in advance. She did not see another syringe on the desk and at the hearing, she surmised that Mr. Moscariello must have mixed up her syringe with the syringe he prepared for himself before she arrived at his house.

The evidence indicates that Ms. Galle made no inquiry as to why the syringe she saw on the desk had been partially prepared in advance and, by way of explanation, she testified that she knew Mr. Moscariello was in a rush on January 14<sup>th</sup>. In my view, that would have been all the more reason to exercise care, particularly where on all other occasions, Ms. Galle had followed steps which were evidently designed to ensure that no errors occurred. These steps included actually watching Mr. Moscariello draw the vitamins from the vials into the syringe and administer the injection. On January 14<sup>th</sup>, despite what was a clear departure from the procedure she had followed in the past, Ms. Galle made no inquiry regarding the syringe. In that respect, she failed to exercise due care.

It is also noteworthy, in my view, that on February 20<sup>th</sup> Ms. Galle was informed by Mr. Moscariello that he had injected her with deca-durabolin on January 14<sup>th</sup> and Mr. Brancaccio told her that it was a banned substance. As a result, Ms. Galle

asked Mr. Pereira to conduct research online to determine the clearance rate for nandrolone. She testified that he advised her that if a cycle of nandrolone were taken, it could remain in a person's system for up to six months. Ms. Galle apparently concluded that this information did not apply because she understood that a cycle involved multiple doses and she believed that she had been injected with only a small amount of the drug in error. Despite this, Ms. Galle conducted no further investigation or research, sought no advice and made no attempt to ascertain the rules and policies that would apply in the circumstances. Instead, she proceeded to compete in the Junior National Championships and final team selection in Edmonton in late February, 2009.

At that time, Ms. Galle was subject to doping control and made no reference to nandrolone on the doping control form, principally, it would appear because the drug had not been administered in the ten days prior to the competition. Moreover, although Mr. Hayter submitted that Mr. Crete advised Ms. Galle that she could compete until she was told otherwise, the evidence indicates that when Ms. Galle spoke with Mr. Crete on February 17<sup>th</sup>, she had no idea of the reason for her test result. It was only after speaking with Mr. Crete that Ms. Galle learned from Mr. Moscariello that she had actually been injected with deca-durabolin on January 14<sup>th</sup>.

As noted previously, Rule 7.45 of the CADP provides that the period of ineligibility may be reduced where an athlete establishes that he or she bears no significant fault or negligence in relation to the violation. The commentary to the WADA Code indicates that this provision is to be applied only in cases where the

circumstances are truly exceptional and, in my view, the circumstances of this case do not meet that threshold. Although Mr. Hayter submitted that Ms. Galle cannot be responsible for the negligence of Mr. Moscariello, as noted previously, she made no inquiry as to whether Mr. Moscariello used steroids and on January 14, 2009, did not take precautions she had taken in the past when she attended at his home for vitamin injections. She also later competed knowing that she had been injected with nandrolone. In these circumstances, I find that Ms. Galle has failed to demonstrate that she bears no significant fault or negligence in relation to the violation.

Although Mr. Hayter also submitted that as Ms. Galle was injected with a steroid in error, she should not be subject to the same sanction as athletes who intentionally use steroids to enhance their performance, the provisions of the CADP are clear. In order for the period of ineligibility to be reduced under Rule 7.45, the athlete must establish that he or she bears no significant fault or negligence in relation to the violation and, for the reasons set out, I find that the onus has not been satisfied in this case. As in a number of decisions referred to by the CCES where athletes relied on the advice of others, Ms. Galle relied on Mr. Moscariello and she did not exercise the level of care which would justify a reduction in the sanction.

At this juncture, I do not propose to review the decisions referred by the CCES because, to a large extent, they turn on their particular facts. However, those decisions reflect the high standards to which athletes are subject in order to promote

and ensure drug-free sport for all competitors. In the result, I find that pursuant to Rule 7.38, the appropriate sanction is a period of two years of ineligibility from sport.

## COMMENCEMENT OF THE INELIGIBILITY PERIOD

The start date of the ineligibility period is dealt with Rules 7.11 to 7.17 and Rules 7.11 to 7.14 provide as follows:

- 7.11 Except as provided below, the period of *Ineligibility* shall start from the date of the hearing decision providing for *Ineligibility* or, if the hearing is waived, on the date *Ineligibility* is accepted or otherwise imposed.
- 7.12 Where there have been substantial delays in the hearing process or other aspects of *Doping Control* not attributable to the *Athlete* or other *Person*, the body imposing the sanction may start the period of *Ineligibility* at an earlier date commencing as early as the date of the *Sample* collection or the date on which another anti-doping rule violation last occurred.
- 7.13 Where the *Athlete* or other *Person* promptly (which, in all events, for an *Athlete* means before the *Athlete* competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by the CCES, the period of *Ineligibility* may start as early as the date of *Sample* collection or the date on which another anti-doping violation last occurred. In each case, however, where this Rule is applied, the *Athlete* or other *Person* shall serve at least one-half of the period of *Ineligibility* going forward from the date the *Athlete* or other *Person* accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed.
- 7.14 If a *Provisional Suspension* is imposed and respected by the *Athlete*, then the *Athlete* shall receive credit for such period of *Provisional Suspension* against any period of *Ineligibility* which may ultimately be imposed.

While Rule 7.11 specifies that the period of ineligibility shall start on the date of the hearing decision, this Rule is subject to a number of Rules which follow,

including Rules 7.12, 7.13 and 7.14. This latter Rule entitles an athlete to credit for a period of provisional suspension and, in this case, a provisional suspension was imposed on Ms. Galle on March 9, 2009. Mr. Hayter submitted, however, that the period of ineligibility ought to begin on January 24<sup>th</sup>, which was the date that the first sample was collected. In support of this submission, he referred to Rule 7.12 and contended that there were delays in the doping control process as Ms. Galle was not notified of the results of the analysis of the first sample until February 17<sup>th</sup>.

Rule 7.12 provides that the body imposing the sanction may start the period of ineligibility as early as the date of sample collection where there have been substantial delays in the hearing process or other aspects of doping control not attributable to the athlete. In this case, there was no suggestion of any delay in the hearing process and, in my view, the time period between January 24<sup>th</sup>, when the first sample was collected, and February 17<sup>th</sup>, when the results were reported, cannot be regarded as a significant delay so as to justify starting the period of ineligibility prior to the date of the provisional suspension for which Ms. Galle is entitled to credit under Rule 7.14.

In the alternative, Mr. Hayter submitted that the ineligibility period ought to begin on January 24<sup>th</sup> based on general principles of fairness which underlie the CADP and the WADA Code. In this regard, Mr. Hayter contended that CABA adopted the CADP on January 22, 2009, only two days before Ms. Galle competed in Quebec and that she was not required to sign any document which expressly bound her to the Rules

contained therein. Mr. Hayter further contended that in view of the timing of the national championships, the strict application of the Rules would result in a longer period of ineligibility than that prescribed by the CADP. In support of his submission, Mr. Hayter also referred to a number of decisions in which it was determined that for reasons of fairness, the period of ineligibility ought to begin on the date of sample collection: see *Hipperdinger v. ATP Tour, Inc.* CAS:2004/A/690 (March 24, 2005); *CCES, BCS v. Despres (supra)* and *Squizzato v. Fédération Internationale de Natation Amateur (FINA)* CAS 2005/A/830 (July 15, 2005).

As pointed out by Mr. Morrow, since the time of the *Despres* decision, the language of the CADP has been amended. Rule 7.12 previously provided that where required by fairness, such as delays in the hearing process or other aspects of doping control not attributable to the person, the body imposing the sanction may start the period of ineligibility at an earlier date beginning as early as the date of sample collection. Similar provisions applied in the *Hipperdinger* and *Squizzato* cases. Those provisions admittedly afforded an Arbitrator broader discretion with regard to the start date of the ineligibility period as delays in the hearing process or other aspects of doping control were examples of factors that might be considered in assessing what was required as a matter of fairness.

Rule 7.12 of the current version of the CADP became effective January 1, 2009 and was adopted by CABA on January 22nd. As a member of CABA, Ms. Galle is bound the CADP by virtue of her participation in sport and there is no requirement for

her to sign a particular document to that effect. As noted previously, Rule 7.12 now refers only to significant delays in the hearing process or other aspects of the doping control not attributable to the athlete as a basis for starting the period of ineligibility as early as the date of sample collection. For the reasons set out, I find that no such delays occurred in this case.

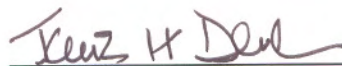
Finally, Mr. Hayter submitted that Ms. Galle ought to be permitted to rely on Rule 7.13 of the CADP and, pursuant to that Rule, to have the period of ineligibility begin on January 24<sup>th</sup>. In this regard, Mr. Hayter contended that Ms. Galle relied on Mr. Crete's advice that she could compete in Edmonton and was not told that by doing so, she could adversely affect her ability to rely on the Rule. Mr. Hayter further contended that had Ms. Galle not relied on Mr. Crete's advice, she would have been eligible for consideration under Rule 7.13 as she has not contested the anti-doping rule violation but only the sanction. In the circumstances, Mr. Hayter submitted that Ms. Galle should not be prejudiced by her reliance on Mr. Crete's advice. Mr. Morrow contended that in order to accept Mr. Hayter's submissions, I would have to rewrite Rule 7.13, which is a matter beyond my jurisdiction. Mr. Morrow further contended that Mr. Hayter's submissions were academic because the formal admission of an anti-doping rule violation did not occur until March 17, 2009 when the request for hearing was filed.

Rule 7.13 of the CADP is clearly intended to encourage the prompt admission of anti-doping rule violations and for an athlete, the Rule specifies that the admission must occur before the athlete competes again. In this case, Mr. Hayter

contended that Ms. Galle should not be prejudiced by the fact that she competed in Edmonton because in doing so, she relied on the advice of Mr. Crete. However, as noted previously, at the time Ms. Galle spoke to Mr. Crete on February 17<sup>th</sup>, she had no idea of the reason for her test result. On February 20<sup>th</sup>, she was informed by Mr. Moscariello that he had mistakenly injected her with deca-durabolin on January 14<sup>th</sup> and accordingly, as of that date, she was aware that she had been injected with a steroid. There was no evidence that Ms. Galle spoke with Mr. Crete following her conversation with Mr. Moscariello. She competed in Edmonton in late February and in early March, she submitted a statement to the CCES together with the sworn declaration of Mr. Moscariello explaining what had occurred on January 14<sup>th</sup>. On March 17<sup>th</sup>, the anti-doping violation was admitted when the request for hearing was filed. In these circumstances and having regard to the submissions of the parties, I cannot conclude that there was a prompt admission of the violation within the meaning of Rule 7.13 so as to justify starting the period of ineligibility on January 24<sup>th</sup>, which was the date the first sample was collected.

Unless a written request is made to the SDRCC by 5:00 p.m. on April 30, 2009, there will be no order as to costs.

DATED AT TORONTO, this 23<sup>rd</sup> day of April, 2009.

  
Arbitrator