

INTERNATIONAL OLYMPIC COMMITTEE

**IOC DISCIPLINARY COMMISSION
DECISION**

**REGARDING LUBOMIR VISNOVSKY
BORN ON 11 AUGUST 1976, ATHLETE, SLOVAKIA, MEN'S ICE HOCKEY**

(Rule 23.2.1 of the Olympic Charter)

1. On 23 February 2010, Mr Lubomir Visnovsky (hereinafter the "**Athlete**") competed in the Men's Ice Hockey play-offs Qualification round in Vancouver.
2. The Athlete was requested on 24 February 2010, in Vancouver, at approximately 12:30 a.m., immediately following the completion of his participation in the Men's Ice Hockey play-offs Qualification round to provide a urine sample for a doping control.
3. Pursuant to Article 6.2.1 of the *IOC Anti-Doping Rules Applicable to the XXI Olympic Winter Games in Vancouver in 2010* (the "**Rules**"), Dr Patrick Schamasch (the "**IOC Medical Director**"), as representative of the Chairman of the IOC Medical Commission, was informed at approximately 9:30 p.m. on 25 February 2010, by the Head of the WADA Accredited Laboratory in Vancouver, of an adverse analytical finding on the A sample of the above-noted urine (hereinafter "**A Sample # 1**").
4. Pursuant to Article 6.2.2 of the *Rules*, the IOC Medical Director determined that the A Sample # 1 belonged to the Athlete, and verified that it did in fact give rise to an adverse analytical finding. He also determined that there was no apparent departure from the International Standards for Testing or the International Standards for Laboratories that undermined the validity of the adverse analytical finding.
5. Pursuant to Article 6.2.3 of the *Rules*, the IOC Medical Director, immediately informed the IOC President, Dr Jacques Rogge, of the existence of the adverse analytical finding and the essential details available to him concerning the case.
6. Pursuant to Article 6.2.4 of the *Rules*, the IOC President, by letter dated 26 February 2010, immediately set up a Disciplinary Commission, consisting of:
 - Thomas Bach (Chairman)
 - Denis Oswald
 - Frank Fredericks

The IOC President also informed the Disciplinary Commission that, pursuant to Rule 23.2.4 of the Olympic Charter and Article 6.1.4. of the *Rules*, the decision of the Disciplinary Commission in this case would constitute the decision of the IOC.

The IOC President has in this case decided that the procedure may be extended beyond the 24 hour time limit as per Article 6.2.14 of the *Rules*.

7. Pursuant to Article 6.2.6 of the *Rules*, by letter dated 26 February 2010 notified to the Athlete, to the Chef de Mission of the NOC of Slovakia, Igor Nemecek, to the International Ice Hockey Federation and to the Head of the Independent Observers' Programme, the IOC President advised of the above-mentioned adverse analytical finding and of the time, date and place of the hearing of the Disciplinary Commission regarding this case.

The adverse analytical finding of the laboratory analysis of the A Sample # 1, issued by the WADA Accredited Laboratory in Vancouver and attached to the above-mentioned

letter dated 26 February 2010, indicated the presence of pseudoephedrine, in a concentration of 204.6 micrograms per millilitre, being greater than the WADA limit of 150 micrograms per millilitre

8. On 26 February 2010, at approximately 12:00 p.m, the Athlete was requested to provide a pre-competition urine sample for a doping control (i.e. before his upcoming semi-final hockey match later that day at 6:30 p.m.). The IOC Medical Director was informed at approximately 5:00 p.m. on 26 February 2010, by the Head of the WADA Accredited Laboratory in Vancouver that the A sample of this urine sample was negative (hereinafter "**A Sample # 2**"). In this case, the concentration of the Athlete's A Sample # 2 of the above-noted urine was much less than 150 micrograms per millilitre WADA limit (i.e. it was approximately 3.0 micrograms per millilitre).
9. On 26 February 2010, at approximately 11:00 p.m, the Athlete was requested to provide a post-competition urine sample for a doping control (i.e. after his semi-final hockey match). The IOC Medical Director was informed at approximately 4:00 p.m. on 27 February 2010, by the Head of the WADA Accredited Laboratory in Vancouver that the A sample of this urine sample was negative (hereinafter "**A Sample # 3**"). The concentration of pseudoephedrine in the Athlete's A Sample # 3 was approximately 0.5 micrograms per millilitre.
10. The Athlete made a written submission on 27 February 2010 (before the result of the A Sample # 3 was known), in which he explained that he deeply regretted that a Specified Substance was recently found in his urine sample. The Athlete further stated that such substance was in no way intended to enhance his sport performance.

The Athlete explained that the Specified Substance entered his body because he had recently been taking an over-the-counter cold medicine called "**Advil Cold & Sinus**[®]." The purpose in taking Advil Cold & Sinus was to treat illness, and not to enhance his sport performance. The Athlete indicated that he specifically chose the Advil brand because he was told by training staff from both his National Hockey League (hereinafter the "**NHL**") team and Slovakian National team that it did not contain a prohibited performance enhancing substance. Moreover, when the Athlete was recently asked by testing officials to list any medications that he had taken in the last seven days, he openly and honestly disclosed the fact that he had taken "Advil Cold" on the Doping Control Form. Finally, the Athlete pointed to the fact that when he was tested around lunchtime on 26 February 2010, that test (i.e. A Sample # 2) came back negative.

The Athlete further noted that he recognised the importance of fair play in these Olympic Games, and that he has tried his best at all times to play fair and according to the rules. He further stated that he appreciates the opportunity to submit a statement before the Disciplinary Commission, and respectfully asked the Commission to take no adverse action against him.

11. The Disciplinary Commission held a hearing on 27 February 2010, at approximately 8:15 a.m., at the Westin Bayshore Hotel, IOC Executive Board Room, in the presence of a delegation from the Slovak Olympic Committee (hereinafter the "**Delegation**") comprised of:

Peter Bondra, General Manager
Matthew Nussbaum, Representative of the Athlete
Dr John Rizos, Physician

12. The International Ice Hockey Federation (hereafter the "**IIHF**") was represented at the hearing by:

Horst Lichtner, Secretary General

13. Also attending the hearing were:

Dr Patrick Schamasch, IOC Medical Director
Professor David Cowan, IOC Medical Commission Games Group
Howard Stupp, IOC Director of Legal Affairs
Andre Sabbah, IOC Doping Control Administrative Coordinator
Soheyly Benham, Susan Greinig and Cherine Fahmy, Assistants
Kate Horan, Minute-taker

Richard Young, Representative of the Independent Observer's Programme

14. The Delegation had been informed of the results of the A Sample # 1 and A Sample # 2 laboratory analyses.
15. The Delegation did not have any objection as to the conduct of the disciplinary procedure, in accordance with Article 6 of the *Rules*, with respect to the alleged anti-doping rule violation.
16. At the hearing, the Athlete's Representative reiterated that the Athlete did not ingest the prohibited substance, pseudoephedrine, with the intent to enhance his sport performance. The Athlete's Representative stated that the Athlete had no history of anti-doping violations and that pseudoephedrine was a Specified Substance under the World Anti-Doping Code, (hereafter the "**Code**"), which is susceptible to non-intentional ingestion since it is easily obtained over the counter. The Athlete's Representative further noted that pseudoephedrine was only recently added to the WADA 2010 Prohibited List (hereafter the "**List**"), in January 2010.

The Athlete's Representative further explained that the Athlete would not challenge the adverse analytical finding of his A Sample # 1 and would not request the opening and analysis of his B sample. Rather, the Athlete stated that he understood that the prohibited substance was found in his body but that it was not intentional and in no way meant to enhance his sport performance.

The Athlete's Representative informed the Disciplinary Commission that the Athlete had been taking Advil Cold & Sinus to combat flu-like symptoms after consulting with Mr. Ken Lowe, a trainer for his professional hockey team, the Edmonton Oilers, and Dr Dalimir Jancovic, a physician for his Slovakian national team. The Athlete discussed taking the Advil Cold & Sinus with Mr. Lowe several weeks ago and more recently with Dr Jancovic. The Athlete's Representative explained that Mr. Lowe is not a doctor, but that he is a medically trained person, and the first point of contact for players on the Edmonton Oilers with medical problems.

The Athlete's Representative pointed out that the Athlete has been open and honest at all times, clearly indicating that he was taking Advil Cold & Sinus on his Doping Control Form. The Athlete asked his Representative to convey to the Disciplinary Commission that this was a mistake that he regretted, and that, had he known that pseudoephedrine was a prohibited substance, he would not have taken it. The Athlete indicated through his Representative that he was remorseful, that he recognised that he was responsible for what goes in his body and that he has learned a valuable lesson.

The Athlete reminded the Disciplinary Commission that his A Sample # 2 tested negative in a pre-game doping control prior to his semi-final match on 26 February 2010, and that he was confident that he would again test negative for a doping control test that he underwent after this match (A Sample # 3).

The Athlete's Representative noted that the Athlete indicated he was taking "Advil Cold" on his Doping Control Form, which is how it is called in Europe, but that he was actually taking "Advil Cold & Sinus," which is what it is called in North America, where he purchased the medication over the counter.

The Athlete's Representative indicated that the NHL anti-doping program does not consider pseudoephedrine as a prohibited substance. While this more liberal approach may be the case for the NHL, the Disciplinary Commission noted that the players must nevertheless seek appropriate guidance and advice regarding the rules applicable to the Olympic Games, to which they are expected to adhere.

When asked why the Athlete was not present at the hearing, the Team Manager informed the Disciplinary Commission that he recommended to the Athlete that he rest after his tough semi-final match last night and prepare for tonight's bronze-medal match.

17. The Disciplinary Commission noted that pseudoephedrine is on the List and that it is referred to as a Specified Substance.

The Disciplinary Commission further noted that WADA did not include pseudoephedrine when they first published their List in 2004, but that it nevertheless remained on WADA's Monitoring Program, a program that monitors substances which are not on the List, but which WADA wishes to monitor in order to detect patterns of misuse in sport. Based on the results of controlled excretion studies as well as scientific literature, the WADA List Committee introduced pseudoephedrine to the 2010 List of prohibited substances as a Specified Substance.

The Disciplinary Commission acknowledges that the half life of pseudoephedrine is 5-8 hours, which means that the concentration in the body of pseudoephedrine in the urine falls by a half every 5-8 hours. The Disciplinary Commission noted that the concentration of pseudoephedrine in the Athlete's A Sample # 2 and A Sample # 3 were much lower than the Athlete's A Sample # 1 (and well below the threshold amount) and this is an indication that the prohibited substance was unlikely to have served to enhance the Athlete's performance during his semi-final match on 26 February 2010.

18. After hearing the Delegation and the arguments it put forward, the Disciplinary Commission retired in order to deliberate.

19. The Disciplinary Commission unanimously concluded that the Athlete had committed an anti-doping rule violation pursuant to Article 2.1 of the Code and Articles 2 and 12 of the *Rules*, in that there was the presence of the prohibited substance in his body, pseudoephedrine.

20. The Disciplinary Commission also noted that:

- (i) the Athlete declared on his Doping Control Form that he was taking Advil Cold & Sinus;
- (ii) the Athlete was unaware that Advil Cold & Sinus contained a prohibited substance; admitted the use of a prohibited substance; confirmed the result of the A Sample # 1, and therefore refrained from asking that the B Sample # 1 be opened for analysis;
- (iii) the Athlete sought the advice from medical staff of his professional NHL team and the Slovakian national team doctor, who were aware that the Athlete had been taking Advil Cold & Sinus;

- (iv) WADA did not include pseudoephedrine when they first published their List in 2004, and only recently introduced pseudoephedrine to the 2010 List of prohibited substances as a Specified Substance;
 - (v) the concentration of the prohibited substance, pseudoephedrine, in the Athlete's A Sample # 2 and A Sample # 3 were approximately 3.0 micrograms and 0.5 micrograms per millilitre, respectively, which were well below the WADA limit (150 micrograms per millilitre) for an adverse analytical finding, before and after the date of the Athlete's semi-final match at the Vancouver Games, namely, 26 February 2010 at 6:30 p.m.;
 - (vi) the Athlete was totally open and cooperative; and
 - (vii) this was the Athlete's first violation during his long career, having participated in the World Championship on four occasions since 2002 and one previous Olympic Games in 2006.
21. The Disciplinary Commission considers that the Athlete should be more vigilant in the future with regard to taking any medication, and that the delegation of the Slovak Olympic Committee should be more vigilant with regard to any medication taken by athletes in its delegation, and that the Slovak Olympic Committee do everything in its power to be in full compliance with all requirements of the IOC Anti-Doping Rules applicable to the XXI Olympic Winter Games in Vancouver, 2010, the World Anti-Doping Code, and the fight against doping and to avoid a recurrence of this situation in the future.

CONSIDERING the above, pursuant to the *IOC Anti-Doping Rules applicable to the XXI Olympic Winter Games in Vancouver, 2010* and, in particular, Articles 1.2 and 2 thereof and pursuant to the Olympic Charter and, in particular, Rule 44 thereof, and pursuant to the World Anti-Doping Code, and, in particular, Articles 2.1 and 10.4 thereof

THE DISCIPLINARY COMMISSION OF THE
INTERNATIONAL OLYMPIC COMMITTEE
DECIDES

- I. The Athlete, Lubomir Visnovsky, Slovakia, Ice Hockey, committed an anti-doping rule violation pursuant to Article 2.1 of the World Anti-Doping Code and Articles 2 and 12 of the *IOC Anti-Doping Rules applicable to the XXI Olympic Winter Games in Vancouver, 2010*;
- II. The Athlete is issued a reprimand;
- III. To recommend to the IOC Executive Board that it open a disciplinary procedure against Dr Dalimir Jancovic, the Slovak national team doctor;
- IV. To forward this Decision to the International Ice Hockey Federation for any further action within its own competence, including with regard to Mr Ken Lowe, as it may deem appropriate; and
- V. This decision shall enter into force immediately.

Vancouver, 28 February 2010

The IOC Disciplinary Commission

Thomas BACH
Chairman

Denis Oswald

Frank Fredericks