

26 November 2022

**DECISION OF THE INTERNATIONAL TENNIS INTEGRITY AGENCY  
PURSUANT TO ARTICLE 7.14 OF THE 2022 TENNIS ANTI-DOPING PROGRAMME**

**I. Introduction**

1. The International Tennis Integrity Agency (the **ITIA**) is the delegated third party, under the World Anti-Doping Code (the **Code**), of the International Tennis Federation (the **ITF**), the international governing body for the sport of tennis and signatory of the Code. Under the delegation, the ITIA is responsible for the management and administration of anti-doping across professional tennis in accordance with the 2022 Tennis Anti-Doping Programme (the **TADP** or the **Programme**), which sets out Code-compliant anti-doping rules applicable to players competing in Covered Events.<sup>1</sup>
2. Fernando Verdasco (the **Player**) is a 38-year-old tennis player from Spain. He has achieved a career-high singles ranking of 7. By virtue of (among other things) his ATP ranking in 2022 (and preceding years) and his participation in Covered Events, the Player became bound by and was required to comply with the TADP.
3. The ITIA has asserted commission by the Player of anti-doping rule violations under Article 2.1 and/or Article 2.2 of the TADP, which read:
  - “2.1 *The presence of a Prohibited Substance or any of its Metabolites or Markers in a Player’s Sample, unless the Player establishes that such presence is consistent with a TUE granted in accordance with Article 4.4.*”
  - “2.2 *Use or Attempted Use by a Player of a Prohibited Substance or a Prohibited Method, unless the Player establishes that such Use or Attempted Use is consistent with a TUE granted in accordance with Article 4.4.*”
4. The ITIA has proposed certain Consequences based on its analysis of the degree of fault that the Player bears for those violations.
5. The Player has admitted the anti-doping rule violations asserted and acceded to the Consequences proposed. TADP Article 7.14 provides:
  - “7.14.1 *At any time prior to a final decision by the Independent Tribunal, the ITIA may invite the Player or other Person to admit the Anti-Doping Rule Violation(s) asserted and accede to specified Consequences [...]*
  - 7.14.2 *In the event that the Player or other Person admits the Anti-Doping Rule Violation(s) asserted and accedes to the Consequences specified by the ITIA [...], the ITIA will promptly issue a reasoned decision confirming the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences [...], will send notice of*

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<sup>1</sup> Any word or phrase in this decision that begins with a capital letter and that is not otherwise defined in this decision has the meaning given to it in the Programme.

*the decision to the Player or other Person and to each Interested Party, and will Publicly Disclose the decision in accordance with Article 8.6. [...]*

*7.14.3 Any decision issued by the ITIA in accordance with Article 7.14.2 that an Anti-Doping Rule Violation has been committed [...] will address and determine (without limitation): (1) the factual basis of the decision that an Anti-Doping Rule Violation was committed; and (2) all of the Consequences to be imposed for such Anti-Doping Rule Violation, including the reasons for imposing the Consequences specified, and in particular the reasons for exercising any discretion not to impose the full Consequences available under this Programme.”*

## **II. The Player's commission of an anti-doping rule violation**

6. The Player has been diagnosed with the medical condition attention deficit hyperactivity disorder (**ADHD**). To treat his condition, he legitimately uses a medication containing methylphenidate, pursuant to a Therapeutic Use Exemption (**TUE**) granted by WADA on 8 May 2017. The TUE was granted for a period of four years, which expired on 8 May 2021. During the course of 2021 and early 2022, the Player underwent periods of injury, surgery, and recovery, and his personal life and tennis activity were adversely impacted by the effects of the Covid-19 pandemic.
7. On 15 February 2022, while competing at the ATP 500 Rio Open event held in Rio de Janeiro, Brazil (the **Event**), the Player was required to provide a urine sample for drug testing pursuant to the TADP. The sample he provided was given reference number 3175020 and was split into an A sample and a B sample, which were sealed in tamper-evident bottles and transported to the WADA-accredited laboratory in Montreal (the **Laboratory**) for analysis.
8. The Laboratory detected the presence in sample A3175020 of methylphenidate and its metabolite, ritalinic acid. Methylphenidate is a stimulant that is prohibited In-Competition under Section S6.B of the 2022 WADA Prohibited List. Methylphenidate is a Specified Substance. At the time of the sample collection in question, the Player did not possess a valid TUE for methylphenidate.
9. The Adverse Analytical Finding reported by the Laboratory in respect of the A sample was considered by an independent Review Board in accordance with TADP Article 7.4. The Review Board did not identify any apparent departures from the applicable sample collection and sample analysis procedures that could have caused the Adverse Analytical Finding. It therefore decided that the Player had a case to answer for breach of TADP Article 2.1 and/or 2.2 but recommended that the ITIA first invite the Player to apply for a retroactive TUE (which, if granted, would mean that the Player would not have committed any anti-doping rule violation because any use of methylphenidate would have been permitted by a valid, albeit retroactively granted, TUE).<sup>2</sup>
10. After the Adverse Analytical Finding was reported and the ITIA invited the Player to apply for a retroactive TUE, the Player applied for both a retroactive TUE (i.e., to address his previous use of

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<sup>2</sup> See TADP Article 4.4.1: “*The presence of a Prohibited Substance or its Metabolites or Markers, and/or the Use or Attempted Use, Possession, or Administration or Attempted Administration of a Prohibited Substance or Prohibited Method will not be considered an Anti-Doping Rule Violation if it is consistent with the provisions of a TUE granted to the Player in accordance with the ISTUE*”.

methylphenidate) and a prospective TUE (i.e., to address his use of methylphenidate in the future).

11. The prospective TUE application was denied by the ITIA TUE Committee. The Player asked WADA to review the prospective TUE decision. WADA did so and reversed the ITIA TUE Committee decision and granted the prospective TUE for four years, with effect from 24 August 2022.
12. The retroactive TUE application was denied by the ITIA TUE Committee. WADA declined to review the retroactive TUE decision, and the Player filed an appeal with the Court of Arbitration for Sport (CAS) against the ITIA TUE Committee decision.
13. On 9 November 2022 the ITIA sent the Player a formal pre-charge Notice, asserting that the Player may have committed anti-doping rule violations under TADP Article 2.1 and 2.2.
14. Given that methylphenidate is classified as a Specified Substance under the TADP, the Player was not subject to a mandatory provisional suspension under TADP Article 7.12.1. However, the Player voluntarily accepted a provisional suspension, which came into effect on 9 November 2022, pursuant to TADP Article 7.12.5.
15. TADP Article 2.1 is a strict liability offence that is established simply by proof that a prohibited substance was present in the Player's sample, i.e., the ITIA does not have to prove how the substance got into the Player's system or that the Player took the substance intentionally (or even knowingly).

### **III. Consequences**

#### **A. Period of Ineligibility**

##### **(i) How methylphenidate got into the Player's system**

16. The Player has asserted that he did not intend to cheat and that the methylphenidate in his urine sample was the result of his ingestion of a medication containing methylphenidate that he was prescribed by his physician to treat his ADHD. In support of his explanation, the Player relied on (among other things) the documents filed with his TUE applications (made first in 2017 and then again in 2022) including statements from his physicians as well as diagnostic and medical records.
17. The ITIA accepts that the Player has established that it is more likely than not that the presence of the methylphenidate found in his urine sample 3175020 was due to his ingestion of medication containing methylphenidate in the days prior to collection of the sample.

##### **(ii) TADP Article 10.2**

18. This is the Player's first doping violation.
19. TADP Article 10.2.1 mandates a two-year ban for a TADP Article 2.1 or 2.2 violation that is not "*intentional*" and is a first violation.<sup>3</sup> If the prohibited substance in question is classified as a

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<sup>3</sup> In accordance with TADP Article 10.9.4.1, for the purposes of imposing consequences under the TADP, the Anti-Doping Rule Violations will be "*considered together as one single first Anti-Doping Rule Violation, and the*

Specified Substance (as here), the ITIA has the burden of proving that the violation was “*intentional*” within the meaning of 10.2.3. The jurisprudence is clear that what counts in this context is what the Player actually knew, not what he should have known.<sup>4</sup>

20. As explained in more detail below, the ITIA accepts that the Player’s tennis activity during 2021 and 2022 was affected by periods of injury, surgery, and recovery, and Covid-19 pandemic-related lockdowns, and the Player had not realised that his previous TUE had expired and therefore inadvertently continued to use his medication without a valid TUE. That explanation is supported by the Player’s disclosure on his Doping Control Form during the 15 February 2022 sample collection session of his previous TUE number. The ITIA also accepts that the medication was used for legitimate medical reasons and the Player did not intend to cheat. Accordingly, the ITIA accepts that the violation was not “*intentional*” within the meaning of TADP Articles 10.2.1 and 10.2.3, and so TADP Article 10.2.2 applies and the starting point for the applicable period of ineligibility is two years.

**(iii) TADP Articles 10.5 and 10.6**

21. TADP Article 10.5 provides that if a player establishes that they bear No Fault or Negligence for the anti-doping rule violation in question, the otherwise applicable period of ineligibility will be eliminated. No Fault or Negligence is defined in the TADP as follows: “*The Player or other Person establishing that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule*”.
22. TADP Article 10.6.1.1 provides that if a player can establish that they bear No Significant Fault or Negligence and that the prohibited substance is a Specified Substance, then the otherwise applicable two-year period of ineligibility may be reduced by up to 100% (in which case there would be a reprimand only). The definition of No Significant Fault or Negligence is: “*The Player or other Person establishing that their 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 relation to the Anti-Doping Rule Violation*”. Where No Significant Fault or Negligence is found, the amount of reduction to be applied depends upon the degree of the player’s Fault.
23. A plea of No Fault or Negligence or No Significant Fault or Negligence is assessed by considering how far the player departed from their duty under the TADP to use “*utmost caution*” to ensure that they would not ingest any prohibited substances or otherwise do anything that might constitute or result in the commission of an anti-doping rule violation.<sup>5</sup> “*The difference between the two [...] is one of degree: to establish No Fault or Negligence, the athlete must show that he took every step available to him to avoid the violation, and could not have done any more; whereas to establish No Significant Fault or Negligence, he must show that, to the extent he failed*

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*sanction imposed will be based on the Anti-Doping Rule Violation that carries the more severe sanction*” if (as here) the Player did not commit the second Anti-Doping Rule Violation after he received notice of the first.

<sup>4</sup> ITF v Sharapova, Independent Tribunal decision dated 6 June 2016, para 68, not challenged on appeal, Sharapova v ITF, CAS 2016/A/4643.

<sup>5</sup> See, for example, Kutrovsky v ITF, CAS 2012/A/2804, para 9.49; FIFA & WADA, CAS 2005/C/976 & 986, paras 73-75.

to take certain steps that were available to him to avoid the violation, the circumstances were exceptional and therefore that failure was not significant".<sup>6</sup> The TADP definition of Fault<sup>7</sup> makes clear that the first question is how far the player departed from the duty of utmost caution (objective fault) and the second question is whether there is any acceptable explanation for that failure (subjective fault).

24. The standard of "utmost caution" is very onerous and requires a player to show that they "made every conceivable effort to avoid taking a prohibited substance".<sup>8</sup> It follows that "even in cases of inadvertent use of a Prohibited Substance, the principle of the Athlete's personal responsibility will usually result in a conclusion that there has been some degree of fault or negligence".<sup>9</sup>
25. The Player asserts that he bears No Significant Fault or Negligence, so that a period of ineligibility of less than two years should be imposed, because: (i) he had previously been diagnosed with ADHD and was receiving ongoing treatment with medication containing methylphenidate, (ii) in 2016 and then again between 2017 and 2021 he possessed a valid TUE permitting his use of medication containing methylphenidate, (iii) the violation was unintentional and inadvertent because at the time of sample collection he believed that he had a valid TUE and had declared it on his Doping Control Form, (iv) he had not realised that his TUE had expired until he became aware of the Adverse Analytical Finding (and therefore he had not sought to renew the TUE before that time), (v) his failure to monitor the expiry date of his TUE was adversely impacted by the nature and extent of his ADHD condition, the effects of which were exacerbated during 2021 and 2022 due to a number of injuries (and related surgeries and recovery periods) and other circumstances (including the impact of the Covid-19 pandemic), and (vi) he has subsequently applied for and been granted a further prospective TUE permitting his use of medication containing methylphenidate. Those assertions were supported by (among other things) the Player's medical records and statements from his physicians.
26. The ITIA accepts that these factors weigh in the Player's favour. However:
  - 26.1 Article 1.3.1 of the TADP states that it is the "personal responsibility" of each player bound by the TADP to "be knowledgeable of and comply with this Programme at all times", "take

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<sup>6</sup> IBAF v Luque, IBAF Anti-Doping Tribunal decision dated 13 December 2010, para 6.10.

<sup>7</sup> "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."

<sup>8</sup> Knauss v FIS, CAS 2005/A/847, para 7.3.1.

<sup>9</sup> Adams v CCES, CAS 2007/A/131, para 155.

*responsibility for what they use”, and “ensure that any medical treatment they receive does not violate this Programme”.*

26.2 Article 4.4.4.1 of the TADP states “[a]s a general rule, Players must obtain a TUE prior to the presence, Use or Attempted Use, Possession, or Administration or Attempted Administration of a Prohibited Substance or Prohibited Method” and Article 4.4.4.2 states “[i]f the Player does not already have a TUE granted by their NADO for the substance or method in question, the Player must apply directly to the TUE Committee for a TUE as soon as the need arises”.

26.3 Articles 4.4.4.9 and 4.4.4.10 of the TADP specifically remind players that (i) they “may not assume that their application for a TUE (or for renewal or recognition of a TUE) will be granted”, (ii) “[u]nless and until a Player receives notice in writing of a decision granting or recognising a TUE, the Player Uses the Prohibited Substance or Prohibited Method in issue entirely at their own risk”, and (iii) if they wish “to continue to Use the Prohibited Substance or Prohibited Method in question beyond the period for which the TUE has been granted must make a new application for a further TUE”.

26.4 The Player is experienced and has competed at a high level for a long time.

27. As a result of the foregoing, the Player knew, and is deemed to have been on specific notice that, if he continued to use his medication containing methylphenidate after his valid TUE expired on 8 May 2021, he would be at risk of committing an anti-doping rule violation. The Player is deemed to have voluntarily assumed that risk when he continued to ingest the medication containing methylphenidate after 8 May 2021 without any longer possessing a valid TUE. The Player’s Fault is not in his use of methylphenidate as such, but rather in his failure to obtain a renewed TUE in time.<sup>10</sup>

28. Based on the foregoing, the Player was right not to pursue a plea of No Fault or Negligence, because it is not sustainable on the facts. However, the Code comment to Article 10.5 states: “depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.6 based on No Significant Fault or Negligence.” The ITIA accepts that, in the specific circumstances of this case, the Player’s fault was not “significant” within the meaning of TADP Article 10.6.1, justifying a reduction from the two-year starting point. Therefore, discretion arises to reduce the default two-year ban applicable under TADP Article 10.6.1.1 by up to 24 months, depending on the Player’s level of objective and subjective fault.

29. Having regard to all of the circumstances of the case and both the objective and subjective factors, in particular that (i) the Player was receiving legitimate treatment for a properly diagnosed medical condition and had a valid TUE both before and after the Adverse Analytical Finding, (ii) the violation was inadvertent in that the Player believed he had a valid TUE at the time of sample collection, (iii) the nature of the Player’s condition, which is characterised by (among other things)

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<sup>10</sup> WADA v Sundby & FIS, CAS 2015/A/4233, para 105; ITF v Fridman, Anti-Doping Tribunal decision dated 2 March 2006, para 34 (“It is impossible to avoid the conclusion that the player was personally at fault for failing to ensure, by whatever steps were necessary, that she had a valid TUE for terbutaline as at 5 October 2005. [...] the offence is not merely technical [...] the player circumvented safeguards built into the rules to ensure fairness to other competitors”).

a short attention span, being easily distracted, failing to pay close attention to details, and having difficulty with organisation, administrative tasks, and deadlines, and (iv) as demonstrated by the Player's medical evidence – exceptionally – the Player's condition was exacerbated and symptoms worsened in 2021 and 2022 (i.e., the period of time leading up to and after expiry of the Player's previous valid TUE) as a result of multiple periods of injury, surgery, and recovery, and periods of restricted movement and activity due to the Covid-19 pandemic (during which periods the Player was, on the recommendation of his physicians, not using his medication), the ITIA considers that the Athlete's degree of fault was ultimately "*light*". Therefore, the ITIA has proposed, and the Player has accepted, a period of ineligibility of two months.

30. In accordance with TADP Article 10.13.2.1, the Player is entitled to receive credit for the period that he has served while provisionally suspended (which provisional suspension he voluntarily accepted), such that his two-month period of ineligibility will be deemed to have started running from "*the date that written notice of the Player's [...] acceptance of a voluntary Provisional Suspension is received by the ITIA*" (i.e., 9 November 2022). Therefore, it will expire at midnight on 8 January 2023.
31. During his period of ineligibility, the Player's status will be as set out in TADP Article 10.14. In accordance with TADP Article 10.14.5.2, the Player may return to train as part of the team or to use the facilities of a club or other member organisation of a National Association or of a Signatory's member organisation from 25 December 2022.

**B. Disqualification of results**

32. The results obtained by the Player at the Event are automatically disqualified pursuant to TADP Article 9, with all resulting consequences (including forfeiture of the points and prize money accrued).
33. The general rule is that results obtained in the period between the date the anti-doping rule violation occurred and the date that a player starts serving a provisional suspension will be disqualified pursuant to TADP Article 10.10, unless the player demonstrates that fairness requires otherwise. The ITIA accepts that in the very specific circumstances of this case (in particular that the Player had valid TUEs before and after sample collection, the nature and extent of the circumstances that contributed to the Player's failure to renew his TUE sooner, and the fact that the Player possessed a valid TUE from 24 August 2022 onwards) fairness requires otherwise, and so the Player's subsequent results will not be disqualified under TADP Article 10.10.

**C. Costs**

34. Each party will bear its own costs of dealings with this matter.

**D. Publication**

35. In accordance with TADP Article 8.6, this decision will be publicly reported by being posted (in full and/or summary form) on the ITIA's website.

**E. Acceptance by the Player**

36. The Player has accepted the consequences proposed above by the ITIA for his anti-doping rule violation, and has expressly waived his right to have those consequences determined by the Independent Tribunal at a hearing.

**IV. Rights of appeal**

37. This decision constitutes the final decision of the ITIA, resolving this matter pursuant to TADP Article 7.14.2.
38. Further to TADP Article 13.2.1, each of WADA and the Comisión Española para la Lucha Antidopaje en el Deporte (**CELAD**) has a right to appeal against this decision to the CAS in Lausanne, Switzerland, in accordance with the procedure set out at TADP Articles 13.8 and 13.9.
39. As part of this resolution of the matter, the Player has waived his right to appeal against or otherwise challenge any aspect of this decision (both as to the finding that the Player has committed an anti-doping rule violation and as to the imposition of the consequences set out above), whether pursuant to TADP Article 13.2.1 or otherwise. However, if an appeal is filed with the CAS against this decision either by WADA or CELAD, the Player will be entitled (if so advised) to exercise his right of cross-appeal in accordance with TADP Article 13.9.4.

Issued Decision of the ITIA

London, 26 November 2022