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To: All National Anti-Doping Organizations

From: International Paralympic Committee, International Shooting Sport Federation and World Archery

Date: January 23, 2015

Re: TUEs for the use of beta blockers for precision sport Athletes.

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The TUE process can be onerous. It needs to be in order to ensure that where an Athlete is granted a TUE to use a substance which would otherwise be prohibited, he or she is not gaining an unfair advantage over all the other competitors against whom he or she is competing.

Based on this premise, the International Paralympic Committee, International Shooting Sport Federation and World Archery have come together to draft this circular letter in order to clarify just how limited the circumstances are for a TUEC to grant a TUE for the use of a beta blocker to an Athlete who competes in precision disciplines.

#### **The ISTUE Criteria**

NADOs and IFs must cooperate with each other to ensure that all national Athletes and NADO TUECs and all international Athletes and IF TUECs are equally made aware of the ISTUE criteria. We must also cooperate with each other to ensure that these same ISTUE criteria is applied in a uniform and harmonized way when it comes to evaluating TUEs for the use of beta blockers in precision sports.

Conversely, TUECs hold the important responsibility of judiciously applying the ISTUE criteria to each TUE application. TUECs must make certain that the applicant Athlete does in fact fulfil the burden of showing that he or she has satisfied the ISTUE criteria and that he or she should be allowed to compete whilst using the beta blocker.

As you are all aware, Article 4.1 of the ISTUE outlines the criteria that an Athlete must fulfill in order to be granted a TUE. It is the Athlete who bears the burden of proving that he or she fulfills each and every one of these criterion. If there is no severe medical condition and/or if the use of a substance is or has the potential to be performance enhancing and /or if there exist any reasonable alternative treatments, the Athlete competing in a precision sport should not be granted a TUE for the use of a beta blocker.

Yet, precision sport Athletes who apply for a TUE for the use of a beta blocker but who do not satisfy all four ISTUE criteria are often granted TUEs at the national level and this creates inconsistency and potential legal issues with regards to the treatment of beta blockers by precision sport International Federations who govern the sport at the International Level.

We believe this is likely because national-level TUECs often do not appreciate the extent to which beta blockers are notably performance enhancing to precision discipline Athletes and may confer them with a significant advantage. Beta blockers not only reduce heart rate (allowing an Athlete to effectively pull or release the trigger between heart beats), they also reduce hand and body tremors and diminish if not eliminate performance anxiety.

The effects of a beta blocker on a precision sport Athlete can be significant, or minimal. But even when they are minimal, they may be sufficient to make the difference between a podium finish and a tenth place finish. As a result, even if they are in some instances perceived as potentially having only minimal performance enhancing effect on Athletes, any advantage conferred by

the use of the beta blocker is sufficient to conclude that an Athlete has failed to fulfill the second ISTUE criteria. As stated above, it is the Athlete who bears the burden of proving that there is no performance-enhancing effect from the use of the substance in his or her particular case.

### **Recent CAS case law**

A TUE for the use of a beta blocker must not be granted to an Athlete competing in precision sport disciplines:

- ✓ if there are any other reasonable alternatives open to the Athlete to treat the condition

and/or

- ✓ if the Athlete has not successfully shown that the use of the beta blocker does not specifically provide him or her with performance enhancing effects, however big or small, and that as a result the use of the substance places him or her at any competitive advantage, however big or small, over other Athletes.

Two CAS decisions are on point:

In the Berger case in 2009, WADA successfully argued before CAS that a TUE for the use of a beta blocker should not have been granted to Mr. Berger notwithstanding his medical condition. The CAS Panel agreed with WADA that the Athlete had not successfully shown that the therapeutic use of the beta blocker would produce no additional enhancement of performance other than that which might be anticipated by a return to a state of normal health following the treatment of his legitimate medical condition. Further to the Berger award, WADA stated that the Berger award stood as legal precedent on the matter.

In a decision more recently rendered by CAS in 2014, ISSF successfully appealed a WADA TUEC decision to overturn an ISSF TUEC decision and grant an Athlete a TUE for the use of a beta blocker. Notwithstanding her potentially life-threatening heart condition, CAS sided with ISSF and its TUEC and denied the TUE for the use of a beta blocker to this shooting Athlete. The TUE was denied because the Athlete had not successfully established that the criterion of ISTUE Article 4.1. (b) had been satisfied. More precisely, she did not establish that the therapeutic use of the beta blocker would produce no additional enhancement of performance other than that which might be anticipated by a return to a state of normal health following the treatment of her legitimate medical condition. This CAS decision now stands as legal precedent on the matter.

### **The Roles of the TUEC and the Athlete**

On the one hand, the role of the TUEC is to carefully and objectively decide whether or not an Athlete has shown through his or her application and submitted medical documents that he or she does in fact fulfil each individual ISTUE criteria prior to being granted a TUE for the use of a beta blocker.

- ✓ Irrespective of whether an Athlete has a serious medical condition for which the use of a beta blocker is a recommended therapy, and irrespective of various subjective factors that may come into play throughout TUEC deliberations or of the empathy a TUEC may feel towards an Athlete in an attempt to be inclusive, fairness dictates that where an Athlete does not thoroughly satisfy each of the four ISTUE criteria, the TUEC must not grant the TUE.

On the other hand, the role of the Athlete is to satisfy the four ISTUE criteria. Precision sport Athletes must be exhaustive and thorough when submitting a TUE application for the use of a beta blocker.

- ✓ The Athlete must include as much relevant documentation (medical, scientific, statistical etc.) as possible which shows that each of the four criteria has been met.
- ✓ The application should have a statement by an appropriately qualified physician, attesting to the Athlete's mandatory need to use the beta blocker in question for therapeutic reasons. This statement should also attest that there are no other reasonable treatment alternatives that exist or that are available to the Athlete.

- ✓ The Athlete must provide some conclusive proof, scientific, medical or otherwise, that in his or her specific case, the use of the beta blocker does not or may not have the potential of being performance enhancing.

### **The Role of the IF**

In safeguarding the integrity of their sport and the application of their respective Anti-Doping Rules, the IPC, ISSF and WA's respective roles are to carefully monitor national-level TUEs and for their respective TUECs to carefully consider international TUE applications. In both instances, where a TUE application for the use of a beta blocker is truly warranted, it will be recognized and/or granted. But where a TUE does not satisfy the mandatory criteria it certainly shall not be recognized at the international level or will be denied.

The respect of Article 5.7 of the 2015 ISTUE is vital to this monitoring obligation. IPC, ISSF and WA therefore seize this opportunity to respectfully inform you that all precision sport IFs operate under the same principle: TUEs granted for the use of beta blockers at the national level shall never be automatically recognized at the international level.

As result it is imperative for any TUE granted for the use of a beta blocker at the national level to be promptly and expressly communicated to the precision sport Athlete's relevant IF. The IF shall then, in accordance with Article 5.7 of the ISTUE, decide whether it shall recognize the TUE or not. An Athlete who competes at the international level without having a TUE recognized or granted by the IF shall not be absolved from any consequences of an anti-doping rule violation.

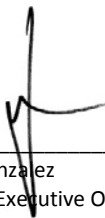
### **Summary**

The fight against doping in sport is not an easy fight, just as the monitoring of TUEs is not an easy task. Yet, both seek fairness, both seek to protect the spirit of sport and both seek to provide every Athlete a chance to compete against an even playing field.

CAS has confirmed that there are very - very - limited circumstances where TUEs for beta blockers in precision sports should be granted.

We hope that you will assist us in ensuring that all TUECs are considering TUE applications for the use of beta blockers in precision disciplines with the same caution and understanding. This necessity for consistency is for the benefit of our Athletes.

We thank you for your cooperation and collaboration and welcome any comments or questions you may have with regards to the contents of this circular letter.



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