MARIA SHARAPOVA’S ANTIDOPING RULE VIOLATION: STATEMENT OF FACTS

I. EXECUTIVE SUMMARY

1.1 For nearly ten years, Maria Sharapova used Mildronate, which unbeknownst to her contained the ingredient meldonium, along with two other over-the-counter, non-prescription products, Magnerot and Riboxin (both of which remain permissible to take), to protect her heart and improve her health. Maria began taking these products when she was 18 years-old on the advice of her family physician in order to treat a series of recurring illnesses.

1.2 Mildronate is used by millions of people in Eastern Europe and is considered so integral to the Russian population that it is protected under the Russian Federation’s “Vital and Essential Drugs List” (alongside ibuprofen, among other products). Its place on the “Vital and Essential Drugs List” is intended to increase its accessibility to the general population. Taking Mildronate in Eastern Europe is like taking aspirin in the United States.

1.3 Before she began taking Magnerot, Mildronate, and Riboxin on her doctor’s advice, Maria took all precautions necessary to ensure that their use was permitted under the Tennis Anti-Doping Programme (the “TADP”). In particular, Maria – through her team – received written assurances from a WADA-accredited laboratory that Magnerot, Mildronate, and Riboxin were safe to use. Only then did Maria begin using these products.

1.4 Every year from 2006 until 2015, Maria had in place a system to ensure her continued compliance with the TADP and the WADA Prohibited List. Because of an administrative error, however, that system broke down just a few weeks before the 2016 Prohibited List was due to take effect, and whether Magnerot, Mildronate, and Riboxin remained permissible – as they all had been for the preceding ten years – was not confirmed.

1.5 On January 1, 2016, WADA added meldonium to its Prohibited List. Maria and her team, however, were unaware of the change in status. Hence, 26 days after meldonium was banned, Maria tested positive for it at the Australian Open.

1.6 Because she had taken Mildronate (along with Riboxin and Magnerot), during that one tournament in 2016, before she learned that it was impermissible to take, Maria promptly
admitted that she had – inadvertently – committed an Anti-Doping Rule Violation under Article 2.1 of the TADP.

1.7 The matter was referred to the Independent Tribunal of the International Tennis Federation (the “Tribunal”), which determined by decision dated June 6, 2016 (the “ITF Decision”) that:

(a) Maria committed an Anti-Doping Rule Violation under Article 2.1 of the TADP;

(b) the violation was not intentional;

(c) a two-year ban should be imposed on Maria, commencing January 26, 2016 (the sample-collection date); and

(d) Maria’s results from the 2016 Australian Open should be disqualified.

1.8 Maria appealed the ITF Decision to the Court of Arbitration for Sport (“CAS”), which by decision dated September 30, 2016 (the “CAS Decision”), disagreed with many aspects of the ITF Decision, reduced the Tribunal’s two-year ban to 15 months,\(^1\) and determined that:

(a) the fault underlying Maria’s Anti-Doping Rule Violation was not significant;\(^2\)

(b) her decision to entrust her agent with helping to ensure her anti-doping compliance was reasonable, as he was sufficiently qualified to handle the task;\(^3\)

(c) the anti-doping authorities (including the ITF and WADA) failed to clearly inform Maria of the change in the rules;\(^4\)

(d) And, most significantly, that Maria:

\(\text{(i)}\) “did not endeavour to mask or hide her use of Mildronate and was in fact open about it to many in her entourage”;\(^5\)

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\(^1\) See CAS Decision, ¶¶102, 103.  
\(^2\) See id., ¶¶86, 94.  
\(^3\) See id., ¶88.  
\(^4\) See id., ¶92 iii.  
\(^5\) Id., ¶100.
(ii) took Mildronate “based on a doctor’s recommendation” and “with the good faith belief that it was appropriate and compliant with the relevant rules and her anti-doping obligations”;  

(iii) did not cheat, and, “under no circumstances, therefore can [Maria] be considered an ‘intentional doper’”;  

II. THE FACTS

2 MARIA SHARAPOVA

2.1 Since Maria was a young girl, her father, Yuriy Sharapov (“Yuriy”), has overseen all aspects of her career, serving as her coach and helping to manage all of her professional activities.

2.2 At age seven, Maria left Russia and moved to the United States with her father. Due to visa restrictions and limited means, Maria’s mother, Yelena Sharapova (“Yelena”), remained in Russia. She would not reunite with her husband and daughter for two years.

2.3 Despite modest beginnings, Maria has gone on to carve out a highly successful tennis career, having won 35 singles titles and five Grand Slam titles, including Wimbledon in 2004.

2.4 Maria has never before violated any anti-doping rules – despite being tested nearly 60 times over the course of her career – and has maintained a flawless disciplinary record.

3 MELDONIUM AND MILDRONATE

3A History

3.1 Meldonium was first developed in 1970 by Ivars Kalvinš of the Latvian Institute of Organic Synthesis, and is now manufactured primarily by Grindeks of Latvia under the brand name “Mildronate.”

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6 Id., ¶100.
7 See id., ¶101.
8 QYR Pharma & Healthcare Research Center (July 2016).
3.2 Meldonium is registered and widely-used in many eastern European countries, including Latvia, Russia, Ukraine, Georgia, Kazakhstan, Azerbaijan, Belarus, Uzbekistan, Moldova, and Kyrgyzstan.\(^9\)

3B Means of administration

3.3 Meldonate is typically used in its capsule form, but it is also used as both a tablet and intravenously.

3.4 Of the three forms of administration, capsule use is most common.\(^10\)

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure.png}
\caption{Europe Production Volume Market Share of Meldonate Dihydrate by Types in 2015}
\label{fig:market_share}
\end{figure}

3C Purpose, effect, and means of use

3.5 Meldonium is typically used as a cardio-protector.\(^11\) Its reported mechanism of therapeutic action is very broadly as follows:\(^12\)

\begin{itemize}
\end{itemize}

\begin{itemize}
\item \(^9\) Id.
\item \(^10\) Id.
\item \(^11\) Id.
\item \(^12\) Source:
\end{itemize}

(1) Medical Report of Dr. Ford Vox ("Vox Rep."), pp. 2-5 and 7-9.
(a) Meldonium reduces the synthesis and uptake of L-carnitine within the body.

(b) L-carnitine has a role in transferring long-chain fatty acids (a source of energy) into structures inside human cells called mitochondria – where the long-chain fatty acids can be metabolized to release energy. As a result, increased amounts of L-carnitine in the human body typically result in increased amounts of long-chain fatty acids within the mitochondria.

(c) High levels of long-chain fatty acids accumulating in the mitochondria (as a result of high levels of L-carnitine) can be toxic to mitochondria, resulting in cell damage or death.

(d) Accordingly, if the levels of L-carnitine in the body are reduced – through the action of meldonium – then there is less risk of damage to mitochondria and the cells within which they are located.

(e) Thus, in basic terms, meldonium ensures that heart cells consume carbohydrates instead of fatty acids as heart cells’ source of energy, which in theory should reduce or prevent the destruction of heart tissue in times of stress, such as periods of increased physical activity.

3.6 Accordingly, a person would be more likely to use meldonium when the heart is likely to be exposed to greater stress – i.e. during intense exercise – than at other times.

3.7 Since meldonium decreases blood-glucose concentration, it is also used as an anti-diabetic.\(^\text{13}\)


3D  **Manufacture, availability, and prevalence of use**

3D(i)  **Manufacturers and brands**

3.8 Meldonium is primarily manufactured by Grindeks, and sold under the brand name “Mildronate.” However, there are several other Eastern European manufacturers of meldonium – for example, Olainfarm and Farmstandart\(^{14}\) – which sell their products under different brands.

3.9 Maria has – since 2006 – used only the Mildronate brand.

3D(ii)  **Availability and prevalence of use**

3.10 Meldonium – and in particular the Mildronate brand – is a well-known, over-the-counter product widely available and extensively used in Russia and otherwise in Eastern Europe.\(^{15}\)

3.11 Russia used 43.99% of all of Europe’s Mildronate respectively in 2015:\(^{16}\)

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\(^{14}\) Russia & CIS Health and Pharmaceuticals, [stating, “Russian Output of the Drug Mildronate is Expected to Reach 900,000 Packs by the End of 2011”], Russia & CIS Health and Pharmaceutical Weekly (September 1, 2011); Anta Blumberga, “Olainfarm’ Plans to Expand Operations in New Export Markets,” Latvia News Agency (December 28, 2009).


\(^{16}\) QYR Pharma & Healthcare Research Center (July 2016).
3.12 Meldonium is particularly widely used in Russia, Latvia, Lithuania, and Belarus – as indicated by the following Mildronate consumption figures:\(^{17}\)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Latvia</td>
<td>3496</td>
<td>3907</td>
<td>4533</td>
<td>4217</td>
<td>3858</td>
<td>3865</td>
</tr>
<tr>
<td>Russia</td>
<td>32576</td>
<td>35629</td>
<td>38262</td>
<td>31996</td>
<td>30570</td>
<td>33031</td>
</tr>
<tr>
<td>Lithuania</td>
<td>2707</td>
<td>3012</td>
<td>3265</td>
<td>2915</td>
<td>2930</td>
<td>3068</td>
</tr>
<tr>
<td>Belarus</td>
<td>2018</td>
<td>2156</td>
<td>2341</td>
<td>2580</td>
<td>2325</td>
<td>2346</td>
</tr>
<tr>
<td>Europe Other</td>
<td>23427</td>
<td>25155</td>
<td>27166</td>
<td>29768</td>
<td>29803</td>
<td>29178</td>
</tr>
<tr>
<td>Europe Total</td>
<td>64224</td>
<td>69859</td>
<td>75567</td>
<td>71476</td>
<td>69486</td>
<td>71488</td>
</tr>
</tbody>
</table>

Source: QYR Pharma & Healthcare Research Center, July 2016

3.13 Of particular note:

(a) Between **30 and 40 million** units of Mildronate capsules are taken each year in Russia alone;

(b) The table above relates only to capsules and does not include data for tablets or liquid forms of Mildronate;

(c) The table above relates only to one brand – Mildronate. It does not include the other meldonium brands (e.g. Olainfarm and Farmstandart);

(d) The consumption of meldonium in all its forms and from all manufacturers is, therefore, likely to be many times greater than the figures provided above.

3.14 As of 2008, Mildronate was among the 20 top-selling products in Russia’s non-funded pharmaceutical market, with sales that exceeded RUB2.3bn.\(^{18}\) Indeed, the use of meldonium was and remains so prevalent in Russia that by Order of the Government of the Russian Federation Mildronate has, since 2010, been included on Russia’s list of **Vital and Essential**

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\(^{17}\) QYR Pharma & Healthcare Research Center, July 2016.

Drugs. The listing recognizes the importance of public access to meldonium, and enables the Russian authorities to regulate its price in order to facilitate broad access.

**3E The suggestion that meldonium enhances athlete performance**

3.15 According to WADA’s Science Director, Dr. Olivier Rabin, WADA banned meldonium based on the data collected during the 2015 Monitoring Program and “literature” identifying its “potential performance-enhancing benefit.”

3.16 However, contrary to such a suggestion:

(a) Dr. Don Catlin, scientific director of the Banned Substances Control Group, has explained that “[t]here’s really no evidence that there’s any performance enhancement from meldonium. Zero.”

(b) Dr. Ford Vox, a specialist in rehabilitation medicine, also notes that “there is no reliable evidence that Mildronate has any performance-enhancing properties.”

3.17 Dr. Vox went into further detail in his medical report dated September 28, 2016:

*I consider it necessary to comment on the three papers which the World Anti-Doping Agency (“WADA”) appears to have relied upon in order to suggest that Mildronate is performance-enhancing, and therefore give it prohibited status for athletes […]:*

- *Kakhabrishvili, 2002: I could not obtain this study through a large university research library nor could Ms. Sharapova’s law firm locate it. I was only able to obtain the paper after a student at Tbilisi State Medical University took photographs of the library’s copy and emailed them to a journalist who then shared them with me.*

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22 See Dr. Catlin biography, [http://www.antidopingresearch.org/about-don-catlin-m-d/](http://www.antidopingresearch.org/about-don-catlin-m-d/)
24 Vox Rep., p. 3.
The study purports to compare 7 judokas on Mildronate to 7 judokas off of the drug. The study suggests that Mildronate had a positive effect on the physical working capacity of the judokas taking the drug. The study, however, was fundamentally flawed: the small study group of seven judokas taking Mildronate were on average 7 years older and 23 kilograms heavier than the group not taking Mildronate. Nothing of value can be concluded by comparing these two incomparable groups. The study does not use accepted and validated exercise tests and does not report statistical methods. But beyond the study's lack of scientific sophistication, it is too small and the widely divergent groups were incomparable, and so the paper cannot be deemed reliable evidence that Mildronate has the capacity to enhance sporting performance.

- Dzintare, 2012 and Gorgens, 2015: These papers also suggest that Mildronate has the capacity to enhance performance. But both papers simply recycle data from the unreliable Kakhabrishvili 2002 study referred to above. Neither paper itself studies the potential for Mildronate to enhance performance – the Dzintare paper is merely a literature review, and the Gorgens paper merely relates to testing methods. These papers do not, therefore, provide any evidence that Mildronate has the capacity to enhance sports performance. It is gravely concerning that WADA may have relied on them to justify its inclusion of meldonium on the Prohibited List.25

No study exists which has reliably established that Mildronate has any performance-enhancing effects in humans. A recently published review led by Dr. Wolfgang Schobersberger (Director of the Institute for Sport, Alpine Medicine and Health Tourism at the Tyrol Clinics, Austria) reaches the same conclusion, finding there is “No scientific evidence of performance enhancing properties of meldonium” (Schobersberger 2016).26

3.18 Accordingly, there is no basis on which it could be concluded that meldonium is in any way performance-enhancing.

3.19 As further proof that meldonium is not performance-enhancing, in January 2015 Maria forgot to bring her Magnerot, Mildronate, and Riboxin on a lengthy trip to Australia to play in the Brisbane International Tournament and the Australian Open, which is confirmed by her negative test results set forth in Figure 1 at page 16 below. Nevertheless, she won the 2015 Brisbane International Tournament and advanced to the finals at the Australian Open.

25 Vox Rep., pp. 3-4.
26 Vox Rep., p. 4.
4 MARIA’S USAGE OF MILDRONATE

4A Maria’s Medical history

4.1 Maria’s medical history is summarized below and detailed in the medical report of Dr. Anatoly Skalny (“Dr. Skalny”), her family physician.27

4.2 Maria was under Dr. Skalny’s care from 2005 until 2013.28 Dr. Skalny is a leader in “trace elements medicine,” an area of medicine concerned with the biological role of trace elements on health and disease.

4.3 Maria first visited Dr. Skalny in November of 2005 when she was 18 years-old and suffering from an endless cycle of cold-related illnesses, tonsil issues, and upper abdomen pain.29 Her father, Yuriy, arranged the visit.

4.4 Yuriy and Maria’s mother, Yelena, had lived in the Chernobyl Region of the USSR – the site of the largest nuclear catastrophe in history, linked to statistically-outsized incidents of heart disease and other illnesses30 – and Yelena became pregnant with Maria three months after the disaster. Yuriy had, therefore, long worried that the effects of Chernobyl may have put Maria’s health at risk.

4.5 When, inexplicably, Maria kept getting sick, Yuriy wanted a Russian doctor mindful of the Chernobyl disaster to examine her. It was also important to Yuriy that any doctor treating his daughter share his national background and speak his language, because by communicating in Russian it would be easier for him to fully understand everything her doctor would recommend or prescribe, which was critical in light of Maria’s anti-doping obligations.

4.6 Dr. Skalny fit the profile. Dr. Skalny explains in his report that he “treated Maria not as a professional athlete, but rather as a young lady with an extensive list of medical problems and a

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28 Id. ¶¶10, 30.
family history of serious diseases, which required special support to her physical health and well-being."

4.7 Maria’s significant medical problems included:

(a) Pain and discomfort in the precordial region – the precordium is the portion of the body over the heart:

(b) Complaints regarding exercise-induced fatigue and psycho-emotional overstrain;

(c) Susceptibility to cold-related and inflammatory diseases;

(d) Dizziness and symptoms of vegetative-vascular dystonia. This is a condition that is not extensively described in Western medical literature but that has been characterized extensively in Russian medical literature. In very basic terms, it is a condition which results in insufficient supply of oxygen to tissues and organs;

(e) Borderline abnormal electrocardiogram (EKG) and Laboratory results (showing a tendency toward high glucose levels and consistently elevated levels of aspartate, aminotransferase, and cholesterol);

31 Skalny Rep., ¶15.
(f) Mineral metabolism disorder – i.e. in Maria’s case, that meant abnormally low levels of minerals in her blood; and

(g) Insufficient supply of nutrients through food intake.\(^\text{32}\)

4.8 In treating Maria, Dr. Skalny also considered her family medical history.\(^\text{33}\) For example, Maria’s paternal grandmother, who Dr. Skalny also treated, suffered from severe type-2 diabetes.\(^\text{34}\) In addition, her maternal grandmother had a heart disorder, and Maria’s father lived under the care of a cardiologist as a child.\(^\text{35}\)

4.9 Dr. Skalny also conducted tests on Maria. Specifically, Dr. Skalny ordered a test of her cardio-respiratory system, which was conducted at the Scientific Research Institute of General Pathology and Pathophysiology at the Russian Academy of Medical Sciences, using a spirootriocardiorythmograph (CAE).\(^\text{36}\) The study revealed irregularities in cardiovascular activity and with Maria’s cardiorespiratory system.

4.10 Accordingly, and considering the totality of Maria’s risk factors, Dr. Skalny recommended what he calls in his report a “Rehabilitative Corrective Plan” (the “Plan”).\(^\text{37}\) The Plan, which Dr. Skalny delivered to Maria in January of 2006, included a personalized nutrition regimen, and integrated short courses of Mildronate in combination with Magnerot, Riboxin, and other products.\(^\text{38}\)

4B Why Mildronate?

4.11 As described in Section 3 above, Mildronate is used both as a cardio-protector and also as an anti-diabetic. Given that Dr. Skalny had identified issues with Maria’s cardiovascular activity and cardiorespiratory system and that Maria was prone to high levels of glucose, it was entirely logical and reasonable that Dr. Skalny would prescribe a product (i.e. Mildronate) intended to protect the heart and to lower glucose levels. Since Mildronate was used extensively throughout

\(^\text{32}\) Skalny Rep., ¶12.
\(^\text{33}\) Id., ¶¶12, 15.
\(^\text{34}\) Id., ¶12.
\(^\text{35}\) Id.
\(^\text{36}\) Id., ¶13.
\(^\text{37}\) Id., ¶16.
\(^\text{38}\) Id., ¶16-17.
Eastern Europe for these exact purposes, Dr. Skalny’s advice was consistent with medical convention.

4.12 According to Dr. Skalny, Maria was taking Mildronate out of “necessity” and “exclusively” for her medical conditions. 39

4.13 Maria was, in particular, to use Mildronate, along with Magnerot and Riboxin, on match days and on days of intense practice workouts, as described by Dr. Skalny in his witness statement:

My recommendation that Maria take Mildronate one hour before competition, and at increased dosages during matches of “special importance,” was wholly consistent with my goal of protecting her health, and were not aimed at enhancing her performance. Indeed, my reference to matches of “special importance” was to describe matches of longer duration, in extreme conditions (high temperatures, etc.), where her body and particularly her heart would be under great stress, and her medical conditions would be more likely to be exacerbated. It would also be during these types of matches where Maria, who is a very sensitive and responsible person, would be at her most heightened levels of stress, which could exacerbate the risk of vegetative and other syndromes. 40

4.14 Dr. Vox reviewed Dr. Skalny’s rationale for his recommendation that Mildronate, along with Magnerot and Riboxin should be used on match days and during intense workouts, and concludes as follows in his report:

In Ms. Sharapova’s condition, she was vulnerable to exercise-related infections, spells of over-exertion, and mineral imbalances — all of which would be expected to manifest or worsen with intense competition. Exercise sets up a pro-inflammatory condition, and the cellular protectant properties of Mildronate would have their greatest benefit during these periods of the most intense exercise - that is, her competition days. In plain terms, the greater the stress on the heart, the greater the need to protect it. That need was at its highest during matches. It was, therefore, perfectly logical — given the medical purpose for which Mildronate had been prescribed — for Ms. Sharapova to use Mildronate on match days, and during intense practice sessions. 41

4.15 After implementing the Plan Maria’s health issues declined, so Dr. Skalny recommended that she continue to use Magnerot, Mildronate, and Riboxin. 42

39 Id. ¶28.
40 Id. ¶29.
Maria, pleased with her care, continued working with Dr. Skalny for nearly eight years. Her grandmother, also impressed with Dr. Skalny’s level of care, treated with him as well.

THE INTRODUCTION OF MELDONIUM TO THE PROHIBITED LIST

The introduction of meldonium to the 2015 Monitoring Program

On January 1, 2015 meldonium was added to the WADA Monitoring Program. Meldonium was added to the Monitoring Program on the following bases:

(a) A 2002 study (Kakhabrishvili) indicated that meldonium had a positive effect on the physical working capacity of judokas. As Dr. Vox notes, however, that study was fundamentally flawed as the study group of judokas taking meldonium were on average 7 years older and 23 kilograms heavier than the group not taking meldonium. The two groups were, therefore, incomparable, and so the study cannot be deemed reliable evidence that meldonium has the capacity to enhance sporting performance.

(b) Two further papers (Dzintare 2012 and Gorgens 2015) that also referred to the potential performance-enhancing effect of meldonium. Both of those papers, however, simply recycle data from the unreliable Kakhabrishvili study referred to above – and so these papers do not provide any evidence at all that meldonium has the capacity to enhance sporting performance.

(c) Marketing claims made by certain manufacturers and retailers of meldonium – despite the agendas of such entities being obvious, and the content of such claims being untested.

43 Id., ¶¶10, 30.
45 Axon, n. 23 supra.
46 Vox Rep., p. 3.
47 Vox Rep. p. 4.
48 “Notice - Meldonium,” n. 44 supra.
49 Beans, n. 21 supra.
(d) Emerging evidence that elite athletes were using meldonium. That is hardly surprising given the prevalence of its consumption by the general populations of Eastern Europe.

5B The data generated by the 2015 Monitoring Program

5.2 Apparently based on the above asserted facts, WADA included meldonium in its 2015 Monitoring Program, which was published on September 29, 2014. According to WADA, the 2015 Monitoring Program data demonstrated widespread use of meldonium among elite athletes, as follows:

(a) The WADA-accredited laboratory in Moscow found meldonium in 17% of samples collected from Russian athletes.

(b) 8.7% of 762 samples collected from athletes competing at the 2015 Baku European Games tested positive for meldonium.

(c) The WADA-accredited laboratory in Cologne found meldonium in 2.2% of all samples.

(d) In total, of 58,760 urine samples tested for meldonium under the 2015 Monitoring Program, meldonium was found in 3,625 samples (6%).

5.3 WADA knew, therefore, that a very significant proportion of the athlete population was using meldonium. Any reasonable organization would have realized the very real risk that athletes would be caught out by the change in status of meldonium without adequate notification.

50 “Notice - Meldonium,” n. 44 supra.
Maria was never notified that she was testing positive for meldonium in 2015.

Notably, as set forth in Figure 1, Maria tested positive for meldonium five times throughout 2015, and as late as November 14, 2015, after meldonium had been added to the Prohibited List for 2016. Yet she was never notified of these facts.

Figure 1 – ITF Tests of Maria Sharapova for Meldonium (2015)

<table>
<thead>
<tr>
<th>Sample Collection Date</th>
<th>Urine Sample</th>
<th>Lab Reporting Date</th>
<th>Meldonium</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 January 2015</td>
<td>3062770</td>
<td>20 February 2015</td>
<td>no</td>
</tr>
<tr>
<td>27 April 2015</td>
<td>3066984</td>
<td>20 May 2015</td>
<td>no</td>
</tr>
<tr>
<td>24 June 2015</td>
<td>3065440</td>
<td>8 July 2015</td>
<td>Yes</td>
</tr>
<tr>
<td>9 July 2015</td>
<td>3069460</td>
<td>30 July 2015</td>
<td>Yes</td>
</tr>
<tr>
<td>28 July 2015</td>
<td>3059855</td>
<td>11 August 2015</td>
<td>Yes</td>
</tr>
<tr>
<td>27 October 2015</td>
<td>3071608</td>
<td>10 November 2015</td>
<td>Yes</td>
</tr>
<tr>
<td>8 November 2015</td>
<td>3785059</td>
<td>18 November 2015</td>
<td>no</td>
</tr>
<tr>
<td>14 November 2015</td>
<td>3074531</td>
<td>26 November 2015</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Yet, WADA never thought it necessary to inform Maria of her positive tests despite the fact that meldonium was being added to the 2016 Prohibited List.

To the contrary, in ADAMS, WADA’s Anti-Doping Administration & Management System, a web-based database that coordinates anti-doping efforts, WADA informed Maria that her tests were “Negative,” thereby lulling Maria into a false sense of security that the supplements she was taking, including Mildronate, were permissible to use. Maria’s tests results, as they appeared in ADAMS are set out in Figure 2 below:
### Figure 2 – Maria’s ADAMS page reporting her test results as “Negative” (2015)

<table>
<thead>
<tr>
<th>Date</th>
<th>City</th>
<th>Sport</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>14-Nov-2015</td>
<td></td>
<td>Tennis</td>
<td>Urine: <strong>Negative</strong></td>
</tr>
<tr>
<td>08-Nov-2015</td>
<td>Ofterschwang</td>
<td>Tennis</td>
<td>Urine: <strong>Negative</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Blood passport: Valid</td>
</tr>
<tr>
<td>27-Oct-2015</td>
<td></td>
<td>Tennis</td>
<td>Urine: <strong>Negative</strong></td>
</tr>
<tr>
<td>28-Jul-2015</td>
<td></td>
<td>Tennis</td>
<td>Urine: <strong>Negative</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Blood: <strong>Negative</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Blood passport: Valid</td>
</tr>
<tr>
<td>09-Jul-2015</td>
<td>London</td>
<td>Tennis</td>
<td>Urine: <strong>Negative</strong></td>
</tr>
<tr>
<td>24-Jun-2015</td>
<td></td>
<td>Tennis</td>
<td>Urine: <strong>Negative</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Blood: <strong>Negative</strong></td>
</tr>
<tr>
<td>27-Apr-2015</td>
<td></td>
<td>Tennis</td>
<td>Urine: <strong>Negative</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Blood: <strong>Negative</strong></td>
</tr>
<tr>
<td></td>
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<td></td>
<td>Blood: <strong>Negative</strong></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Blood passport: Valid</td>
</tr>
<tr>
<td>31-Jan-2015</td>
<td>Melbourne</td>
<td>Tennis</td>
<td>Urine: <strong>Negative</strong></td>
</tr>
<tr>
<td>20-Jan-2015</td>
<td>Melbourne</td>
<td>Tennis</td>
<td>Blood passport: Valid</td>
</tr>
<tr>
<td>14-Jan-2015</td>
<td>Melbourne</td>
<td>Tennis</td>
<td>Blood: <strong>Negative</strong></td>
</tr>
</tbody>
</table>

5.7 Remarkably, rather than express remorse for taking no steps whatsoever to prevent Maria’s violation, WADA’s President, Craig Reedie, celebrated that his organization managed to ensnare her: “For me, the only satisfactory element in Madame Sharapova’s case was that in one year she can earn more money than the whole of WADA’s budget put together.”

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The introduction of meldonium to the 2016 Prohibited List

5.8 Apparently, based on the data generated by the 2015 Monitoring Program and the limited scientific literature suggesting that meldonium may enhance performance, WADA placed meldonium onto the 2016 Prohibited List, which was published on WADA’s website on September 29, 2015.56

5.9 Meldonium was the only substance that WADA moved from the Monitoring Program to the Prohibited List 2016. The list became effective on January 1, 2016.

WADA miscalculation

5.10 In the period January 1, 2016 to May 3, 2016, there had been nearly 300 positive meldonium adverse analytical findings.57

5.11 Tacitly recognizing that its prohibition of meldonium was understudied and hastily implemented, on April 13, 2016, WADA issued a notice granting partial amnesty to some athletes who tested positive for the substance in 2016.58 In its notice, WADA recognized that athletes could have taken meldonium well before it became prohibited, but then still tested positive for it well after January 1, 2016.59 That notice acknowledged how little data there was in relation to the excretion rate of meldonium:

Limited data exists to date on the urinary excretion of meldonium. Several studies are currently being conducted involving WADA-accredited laboratories, and WADA will share these results with its stakeholders when available. […]

5.12 Remarkably, two months later, WADA released a further notice,60 admitting that it had not conducted any excretion studies on meldonium prior to it being included on the Prohibited List, nor had it obtained any such data from elsewhere:

56 See https://www.wada-ama.org/en/media/news/2015-09/wada-publishes-2016-prohibited-list
57 WADA (@wada_ama), Twitter (May 3, 2016), https://twitter.com/wada_ama/status/727610697350320128 (“There have been 288 Adverse Analytical Findings (positive findings) for Meldonium recorded since substance was banned on 1 January 2016.”).
59 “Notice - Meldonium,” n. 44 supra.
As a matter of course, for reasons of efficiency, WADA does not conduct excretion studies before including a substance on the Prohibited List. This information is generally provided by the manufacturer. In the case of meldonium, no information was provided as it relates to urinary excretion.

5.13 That latest notice also recognizes that meldonium is capable of remaining detectable in urine at least up to a year following last consumption:

[... ] given the results of the studies, it cannot be excluded that, at very low dosages, as indicated in the above table, the use of meldonium could have occurred before the Prohibited List was published by WADA on 29 September 2015. In these unique circumstances, WADA would consider it acceptable that the athlete’s results not be disqualified or be reinstated in the absence of any evidence that meldonium was used after 29 September 2015.

5.14 WADA’s handling of the meldonium issue has been marked by one poor judgment after another. WADA’s failure to issue adequate notifications to athletes and to international federations regarding the addition of meldonium to the Prohibited List is yet another example of its pattern of mistakes. This issue is addressed in further detail at Section 6 below.

6 NOTIFICATION TO ATHLETES ON THE PROHIBITED STATUS OF MELDONIUM

6.1 Given the prevalent use of meldonium among athletes and the general population of Eastern Europe – one of the key reasons for it becoming prohibited as described above – it is astounding that very little effort was made by WADA or the ITF to notify athletes such as Maria that meldonium was being placed onto the Prohibited List.

6A WADA’s notifications

6.2 WADA’s attempt to notify athletes that meldonium had been added to the Prohibited List consisted of the publication on its website of its “2016 Prohibited List - Summary of Major Modifications and Explanatory Notes,” dated September 16, 2015.61

6.3 Notably, the “2016 Prohibited List - Summary of Major Modifications and Explanatory Notes” was not distributed to athletes. If an athlete or interested party had decided to go to the WADA website to seek out the document, they would need to have known of its existence and exactly

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61 “2016 Prohibited List,” WADA, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwi25Mr5xbDPAhVRAw4KHQ2SCExwFggeMAA&url=https%3A%2F%2Fwww.iaaf.org%2Fdownload%2Fdownload%3Ffilename%3D6aec7d37-077d-48a8-8c05-2ed3389dc83d.pdf%26urlslug%3DThe%2520WADA%2520Prohibited%2520List%25202016%2520%25E2%2580%2593%2520Summary%2520of%2520Major%2520Modifications%26usg%3DAFQjCNFjZq8b0xlyJ1vag5jL60HnGHaFBw&sig2=n9zF117EkpNC-4YcnDxVQ.
where to find it. But simply going to the section of the WADA website titled “The Prohibited List”\textsuperscript{62} would not have helped since the document does not appear there. Instead, another document titled “Questions & Answers on the Prohibited List,” does appear:

All Stakeholder issues and comments were discussed in detail at List Committee meetings. Further information on topics included in the Summary of Modifications and Explanatory Notes, and on many other issues or queries brought to the attention of the List Committee as part of the stakeholders comments are in the Questions & Answers on the Prohibited List.

6.4 The “Questions & Answers on the Prohibited List” does not, however, say a single word about meldonium or Mildronate:\textsuperscript{63}

PROHIBITED LIST

1. What is the status of platelet derived preparations (PRP)?
2. Is Plasmapheresis prohibited?
3. Is Intravenous Laser Therapy prohibited?
4. What is the status of methylhexaneamine (MHA)?
5. What is the link between geranium oil and methylhexaneamine (MHA)?
6. What is the status of clenbuterol?
7. What is a ‘specified substance’?
8. What is the status of colostrum?
9. Why may there be a delay in determining the status of some substances on the Prohibited List?
10. Can I test positive for ingesting glycerol found in foodstuffs and toiletries or for using it as a lubricant?
11. Are hormone releasing factors prohibited under S2?
12. Is dialysis a Prohibited Method?

6.5 As noted at Section 5 above, WADA knew that meldonium was found in 6\% of all samples which were the subject of the 2015 Monitoring Program, and that was apparently a key reason for meldonium’s introduction to the Prohibited List. In light of that, it is beyond belief that WADA made no effort at all to publicize to athletes the change in status of meldonium.


6B  The ITF’s notifications

6B(i)  The ITF’s obligations to publicize the prohibited status of meldonium

6.6 WADA’s publication of the Prohibited List 2016 imposed two obligations on the ITF, i.e.:

(a) to “take appropriate steps to distribute the Prohibited List to its members and constituents” (WADA Code, Article 4.1).\(^{64}\)

(b) to “take reasonable steps to publicise any amendments made by WADA to the Prohibited List” (TADP, Article 3.1.3).\(^{65}\)

6B(ii)  The ITF’s attempts at publication

6.7 The ITF made very minimal attempts to “distribute” the Prohibited List 2016 and to “publicize” its changes, as outlined below.

6.8 In December 2015, the ITF sent wallet cards to the Women’s Tennis Association (the “WTA”) listing all of the substances on the Prohibited List 2016 for the WTA to distribute as they saw fit. Maria was never given a wallet card. Rather, a representative of the WTA gave a card to her coach, on or after January 12, 2016 at the Australian Open—two weeks after meldonium had become prohibited. Her coach, who was under no obligation to give a card to Maria, did not provide the card to her, nor did the WTA staff. As a result, Maria never saw the wallet card prior to testing positive for meldonium on January 26, 2016.

6.9 Even if Maria had been given a Wallet Card, however, it does not publicize or highlight the amendments to the Prohibited List.\(^{66}\) Rather, it reproduces only the Prohibited Substances of which meldonium is listed among hundreds of other substances. In addition, “Mildronate,” the only name by which Maria knew of the product, does not appear anywhere on the Wallet Card.\(^{67}\)

\(^{64}\) 2015 WADA Code Article 4.1.
\(^{65}\) TADP Article 3.1.3.
\(^{67}\) Id.
6.10 The ITF posted the Prohibited List 2016, a Summary of Modifications to the list, and the dense wallet card, on the ITF’s website (December 7, 2015) – i.e. not on its homepage, but at the back of its website. To find the materials, a player browsing the site would need to:

(a) scroll over the “About ITF” link;
(b) click on “Anti-Doping”; 
(c) scroll over “Rules”; 
(d) click on “Prohibited List”; and
(e) scroll down the page and click on “WADA 2016 Prohibited List.” But this exercise would only get the player to the Prohibited List 2016 itself.

(f) To find the actual amendments to the Prohibited List, the player would need to scroll down the page, click on the “WADA Prohibited List 2016 – Summary of Modifications.” Only there would the player learn that meldonium had been removed from the 2015 Monitoring Program and added to the Prohibited List 2016.

6.11 In short, a player seeking to find the Prohibited List or its amendments posted on December 7, 2015 would need to know precisely what he or she was looking for, and where to find it. Maria was never alerted to that embedded posting and therefore never visited the ITF website. Even if she had been so notified, and had examined the Prohibited List 2016 for the presence of Mildronate, she would need to know – and she did not – that Mildronate was a brand name for the generic name meldonium (as it appears in the Prohibited List).

6.12 On December 22, 2015 — around one week before meldonium became prohibited — the ITF sent players an e-mail with the subject, “Main Changes to the Tennis Anti-Doping Programme for 2016.” The e-mail read as follows:

68 ITF Decision ¶36.
70 E-mail from Abbey-Jayne Tugwood, ITF Anti-Doping Assistant, to Players and Agents (December 22, 2015).
Dear Players and Agents,

Thank you for your cooperation in 2015. Please take note of the following changes to, and reminders regarding, the Tennis Anti-Doping Programme for 2016.

Changes

1. The TUE administration service will be in operation 7 days a week from January 1 2016 (separate notice to follow). The aim of this change is to minimize delays in the processing of TUEs at weekends.

2. You may now select a time slot in ADAMS for out-of-competition days between 0500-2300 (i.e., one hour earlier than at present).

3. The Anti-Doping wallet cards are now available in English, French and Spanish and can be downloaded from the ITF website. http://www.itftennis.com/antidoping/whereabouts/overview.aspx

Reminders

1. You can be tested at any time and at any place. This means that Doping Control Officers may come to test you at the address listed in your ADAMS outside of your specified time slot. If you are notified in person then you must complete the test, otherwise you risk committing a violation for refusal. However, you only remain liable for a Missed Test if you are not available at your specified address during your specified time slot.

2. Please make sure that all of your tournaments are indicated in the green ‘competition’ category. Failure to do so may result in a Filing Failure.

3. Please make sure that you update your whereabouts to ‘overnight accommodation’ following your final match at an event. Failure to do so may result in a Filing Failure.

4. For Davis Cup the in-competition period is Thursday-Sunday. For Fed Cup the in-competition period is Friday-Sunday.

5. During competition you do not have to provide a 60-minute time slot or full address, but you must update your status to ‘out-of-competition’ and provide full whereabouts from the day following your final exit from an event.

6. Players may not photograph or record sample collection sessions. Failure to comply with this requirement once advised by the Doping Control Officer will result in the termination of the sample collection and may result in the player being charged with an Anti-Doping Rule Violation under Articles 2.3 and/or 2.5.

7. Players are advised to ensure that they have provided a current mobile phone number in their ADAMS profile. This will allow the Doping Control Officer to call you prior to the end of your 60-minute time slot and possibly avoid an inadvertent Missed Test.
8. Players are encouraged to provide feedback and concerns in the comments section on the Doping Control Form when tested or at any time by emailing anti-doping.admin@itftennis.com

Kind regards,

ABBEY-JAYNE TUGWOOD

6.13 As its text makes painfully clear, this e-mail provided not a shred of notice regarding either the content of the Prohibited List 2016 or even that any amendments have been made to it. Instead, the only items listed under the heading “Changes” were the following:

Changes

1. The TUE administration service will be in operation 7 days a week from January 1, 2016 (separate notice to follow). The aim of this change is to minimize delays in the processing of TUEs at weekends.

2. You may now select a time slot in ADAMS for out-of-competition days between 0500-2300 (i.e., one hour earlier than at present).

3. The Anti-Doping wallet cards are now available in English, French and Spanish and can be downloaded from the ITF website. http://www.itftennis.com/antidoping/whereabouts/overview.aspx

6.14 The elements of the email emphasized by the ITF in bold type dealt with the time-window in which to specify one hour slots for testing, and with players photographing the test procedure. Further, the only message singled out for separate follow-up notice dealt with administration of the TUE program.

6.15 The CAS Decision highlighted the ITF’s failure, expressing its “concern” that: “the ITF’s notices to athletes that referred to ‘Significant Changes’ to the TADP referred only to procedural changes and not to the addition of new prohibited substances.”

6.16 Thus, the December 22, 2015 e-mail was not only inadequate notice of the changes to the Prohibited List 2016, it gave every indication to Maria – and anyone else reading it – that the Prohibited List stood unchanged for 2016. Maria reviewed the e-mail and, seeing no reference to the Prohibited List, took no further action.

71 CAS Decision, ¶92 iii.

72 In contrast, as evidenced by the ITF’s e-mail to players of July 21, 2016 and accompanying notice emblazoned with caution tape, the ITF is able to provide more pointed notice of anti-doping obligations when it so desires.
6B(iii)  Prior ITF notifications

6.17  The ITF has previously been reasonably proactive about publicizing changes to the Prohibited List. It is unclear why the ITF did not make the same efforts with respect to meldonium. For example, in the past, the ITF has – through its website – explicitly and transparently displayed amendments to the WADA Prohibited List:

(a)  In June 2014, the ITF publicized that two substances would be added to the Prohibited List on September 1, 2014.\(^{73}\)

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In August 2014, the ITF website again highlighted the addition of those substances:  

![Image](Amended%202014%20Prohibited%20List%20in%20force%20September%201.jpg)

6.18 The ITF has also in the past explicitly publicized other important changes, like those to the WADA Code and the TADP. Most notably, the ITF has even issued specific public warnings in relation to particular Prohibited Substances: “All players subject to the Tennis Anti-Doping Programme should be aware that 1,3-dimethylbutylamine is a prohibited substance which is appearing in increasing numbers in supplements and is the cause of Anti-Doping Rule Violations.” That particular warning even specified products reported to contain the Prohibited Substance in question.

6.19 The above examples make clear that the ITF is aware of the importance of, and is capable of, when they want to, providing proper notifications to players. The ITF simply should have known that its passive approach to alerting players about meldonium was woefully inadequate.

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76 Id.
The WTA’s notifications

The WTA is the principal organizing body of women’s professional tennis. It governs the WTA Tour which is the worldwide professional tennis tour for women.

Regrettably, despite nearly half of its top 100 tennis players being from Eastern Europe or Russia,⁷⁷ the WTA also did not issue any specific notice relating to Mildronate or meldonium.

Rather, the WTA sent an email to players on December 18, 2015, which listed 11 news items. Among those news items, the email mentioned under “2016 Tennis Anti-Doping Programme” that “[a]ll 2016 documentation and information is available through the Player Zone” with no mention of any amendments or additions to the Prohibited List. In order to reach the “documentation and information,” the recipient of the e-mail would have to navigate a labyrinthine route:

(a) **First**, read the news item regarding the 2016 Tennis Anti-Doping Program, note that “documentation and information” is available “through the Player Zone”;

(b) **Second**, scroll down to find and click through to the Player Zone link;

(c) **Third**, log in to the Player Zone site by entering your username and password;

(d) **Fourth**, review a home screen with more than three-dozen links covering multiple topics;

(e) **Fifth**, find and click on a link called “2016 Changes to Tennis Anti-Doping Program and Information”;

(f) **Sixth**, review a webpage containing approximately three-dozen links;

(g) **Seventh**, find and then either:

   (i) click on “Summary of Modifications to the 2016 Prohibited List”; or

   (ii) click on the “2016 Prohibited List.”

⁷⁷ See WTA Top 100 Singles List, December 14, 2015, http://www.wtatennis.com/singles-rankings
6.23 Since the WTA’s December 18, 2015 email did not alert players of any changes to the Prohibited List, players simply had no reason to go through the rigorous process above.

6D Notifications in other sports

6.24 Demonstrating how easy and effective it would have been for WADA, the ITF, and the WTA to do more than what they did to publicize meldonium’s prohibited status, we include below examples of some of the efforts made by several other federations to notify their athletes.

6.25 If Maria was not a tennis player – but instead a Russian skater (for example) – she would have been properly notified that Mildronate (note – not just meldonium) was to become prohibited on January 1, 2016, and ceased her use of it or sought a TUE prior to then.

6D(i) The International Weightlifting Federation notifications

6.26 As set out below, the International Weightlifting Federation (“IWF”) issued a warning relating to Mildronate prior to meldonium being added to the Prohibited List 2016.78 The warning was prompted by the fact that “[a]ccording to recent scientific publications of the WADA accredited laboratories Cologne and Moscow, 2–17% of doping control samples collected in 2014 and 2015 contained mildronate.”79 Notably, the notification treated “Mildronate” as the name of the substance (and not just a brand name) and also listed the various other brand names under which meldonium is known/marketed:

79 Id.
6.27 The IWF did not stop there. Instead, to protect its athletes from an inadvertent Anti-Doping Rule Violation, the IWF repeated its warning prior to January 1, 2016 in three languages, including Russian. Notably, it is evident that the IWF considered “Mildronate” to be the primary name of the substance and not just a brand name (note how the term “meldonium” is relegated to brackets):\(^8^0\)

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\(^8^0\) “WARNING Предупреждение – AVISO (MILDRONATE),” IWF, http://www.iwf.net/2016/03/11/warning-%D0%BF%D1%80%D0%B5%D0%B4%D1%83%D0%BF%D1%80%D0%B5%D0%B6%D0%B4%D0%B5%D0%BD%D0%B8%D0%B5-aviso-mildronate/. 
6D(ii) The Russian Skating Union notifications

6.28 The following notifications were issued by the Russian Skating Union ("RSU") to notify Russian skaters of the addition of Mildronate to the Prohibited List:

(a) On October 1, 2015, the senior physician of the RSU, on the same day that she learned that Mildronate/meldonium would become prohibited on January 1, 2016, made notifications of that fact as follows:
(i) On “Viber,” she sent the following group message to the RSU Head of Medical Staff and all of the physicians of the Russian skating teams:

<table>
<thead>
<tr>
<th>Image of Viber group message</th>
<th>Translation</th>
</tr>
</thead>
</table>
| ![Viber group message image](image-url) | **Group:** Vadim, Victoria, Pechersky, Pop.. **October 1, 2015**  
**Please note:** 12:59  
**News of the day on the right side of the page**  
Million is prohibited as of January 1, 2016. It has been included in the “hormones” category. 13:00  
**Mildronate** 13:01 |

(ii) On Facebook - where she is “friends” with athletes, coaches, physicians, and all leading Russian skaters - she posted the following:
<table>
<thead>
<tr>
<th>Image of Maria Rozina’s Facebook posts</th>
<th>Translation</th>
</tr>
</thead>
</table>
| ![Image of Maria Rozina’s Facebook posts](image1.png) | **Search**

**Maria Rozina** shared a photo by RUSADA  
Dec 14, 2015, 18:49 Moscow

**RUSADA**  
Dec 14, 2015, 11:29 Moscow

We strongly recommend that athletes discontinue taking MELDONIUM(MILDRONATE) because, according to the 2016 Prohibited List, this substa... **READ MORE**

**ATTENTION!**

Image: Mildronate  
Meldonium 250 g.  
40 capsules Grindex

| ![Image of Maria Rozina’s Facebook posts](image2.png) | Search  

**Maria Rozina** shared a post by Andrey Yurkov  
Oct 1, 2015 at 12:44

**Andrey Yurkov**  
Oct 1, 2015 at 12:07 Twitter

Attention to all the athletes and trainers! Mildronate (meldonium, idrinol) is permanently banned as of January 1! I am ready to answer questions :)  
Like Comment Share

**Maria Rozina** shared a post.  
Sept 25, 2015 at 15:46

**SCIENCE**  
**Scientists Humor:**  
**Restate your thesis in one sentence.**  
At a famous... |
(iii) On the Whatsapp group for athletes, she sent the following message regarding Mildronate:

<table>
<thead>
<tr>
<th>Image of Maria Rozina's post in the athletes' WhatsApp group</th>
<th>Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image.png" alt="WhatsApp group image" /></td>
<td>SPEED SKATING Artiom, Voronina, Graf, Gryaztso.., 16:17 October 1, 2015 Rozina Maria</td>
</tr>
<tr>
<td>News of the day on the right side of the page: Mildronate is banned as of January 1st. 12:52 Kulizhnikov Pasha Enter text</td>
<td></td>
</tr>
</tbody>
</table>

(b) According to multiple Russian skaters, the Russian skating team physicians immediately proceeded to personally inform the skaters and staff at team meetings that Mildronate/meldonium was going to become a prohibited substance from January 1, 2016.

(c) And, according to these same Russian skaters, on October 13, 2015, the RSU also e-mailed all of its regional divisions and speed-skating and short-track sports schools warning them that Mildronate/meldonium was going to be added to the Prohibited List:

<table>
<thead>
<tr>
<th>Russian text from email dated October 13, 2015 from RSU to Regional Divisions</th>
<th>Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Уважаемые представители регионов! Союз конькобежцев России информирует Вас о включении ВАДА в запрещенный список с 1 января 2016 года препарата мельдоний (милдронат и остальные торговые)</td>
<td>Dear regional representatives! Russian Skating Union would like to inform you that as of January 1, 2016 WADA has added meldonium (Mildronate and its other commercial names) to the prohibited list.</td>
</tr>
</tbody>
</table>
In mid-December 2015, the Russian Anti-Doping Agency (“RUSADA”) emailed various skaters reminding them to stop taking Mildronate:

<table>
<thead>
<tr>
<th>Russian text and image from email dated December 14, 2015 from RUSADA to various Russian skaters</th>
<th>Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Тема: FW: ВАЖНО!!!!!!!!! Уважаемые коллеги! Напоминаем о том, что МЕЛЬДОНИЙ (МИЛДРОНАТ) был добавлен в класс S4 (Гормоны и модуляторы метаболизма) Запрещенного списка 2016. Настоятельно рекомендуем спортсменам прекратить использование МЕЛЬДОНИЯ (МИЛДРОНАТА), так как в соответствии с Запрещенным списком 2016 года, эта субстанция будет являться запрещенной КАК В СОРЕВНОВАТЕЛЬНЫЙ, ТАК И ВО ВНЕСОРЕВНОВАТЕЛЬНЫЙ ПЕРИОДЫ.</td>
<td>Subject: FW: IMPORTANT!!!!!!!!! Dear colleagues! Please be reminded that MELDONIUM (MILDRONATE) has been added to class S4 (Hormone and metabolic modulators) of 2016 Prohibited List. We strongly recommend that athletes discontinue taking MELDONIUM (MILDRONATE) because, according to 2016 Prohibited List, this substance will be prohibited DURING BOTH THE IN- AND OUT-OF-COMPETITION PERIODS.</td>
</tr>
</tbody>
</table>
6D(iii) The Belarus Athletic Federation notifications

6.29 According to a high ranking official of the Belarus Athletic Federation ("BAF"), the following notifications were issued by various organizations regarding the addition of meldonium to the Prohibited List:

(a) The BAF first received notice on October 1, 2015 that Mildronate and meldonium would become a prohibited substance as of January 1, 2016, when the Belarusian National Anti-Doping Agency ("NADA") posted a warning notice on its website.81

01.10.2015 | MILDRONATE (Meldonium) is on the 2016 List of Prohibited Substances and Methods!

The 2016 List of Prohibited Substances and Methods that comes into force on 1 January 2016 has been published in English. You can view it on WADA website.

MILDRONATE (Meldonium) is on the 2016 List of Prohibited Substances and Methods! It is necessary to stop taking this substance in advance, as from 1 January 2016 any finding of this substance in an athlete’s sample shall be considered an anti-doping rule violation.

This substance has been added to the S4 class (Hormones and metabolic modulators) of the 2016 List of Prohibited Substances and Methods and is prohibited both in and out of competition.

The 2015 monitoring programme revealed evidence of athletes using mildronate to improve their performance, which is why it has been included on the 2016 List of Prohibited Substances and Methods.
(b) Accordingly, on October 1, 2015, the BAF posted its own warning on its website\textsuperscript{82} – the heading of this notice translates as “\textit{ATTENTION!!! MILDRONATE (MELDONIUM) IS INCLUDED IN THE LIST OF PROHIBITED SUBSTANCES AND METHODS IN 2016!”

\begin{center}
\includegraphics[width=0.8\textwidth]{image}
\end{center}

\textbf{c) The BAF also published further warning notices on its social media sites, including Facebook and Twitter.}\textsuperscript{83}

\textsuperscript{82} http://bfla.eu/?p=9405.

\textsuperscript{83} https://www.facebook.com/blr.athletics/info/?tab=page_info (Archived image from BAF Facebook page)
(d) According to that same BAF official, from October 2015 to the present day (because of the prevalence of Mildronate/meldonium use in Belarus), the Belarusian NADA ran a series of seminars for coaches in various sports across various regions of Belarus, warning them that meldonium would become a prohibited substance from January 1, 2016.

(e) The BAF has held 19 events to date (both pre and post-2016), including seminars and educational quizzes, at which athletes and coaches have been warned about the change in status of Mildronate/meldonium.

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84 https://twitter.com/2015bfla (Archived image from BAF Twitter Feed)
6D(iv) The International Floorball Federation notifications

6.30 The International Floorball Federation (the “IFF”) also made an effort to “reasonably publicize” and explicitly notify its athletes of the addition of Mildronate/meldonium to the Prohibited List 2016. It issued the following warning on its website specifying that Mildronate would become banned.:85

![Image of 2016 List of Prohibited Substances & Methods]

6.31 None of WADA, the ITF, or the WTA issued any specific notices to athletes alerting them to the change in status of meldonium. As demonstrated by the publications of various other sporting organizations in relation to the prohibited status of meldonium, WADA, the ITF, and the WTA could have very easily and cost-effectively taken any one of a number of very simple steps to publicize the fact that Mildronate/meldonium would become prohibited – and those steps would have been very effective indeed.

6.32 WADA was aware that a large number of athletes were using Mildronate/meldonium – indeed, it is one of the reasons it claims that it decided to add meldonium to the Prohibited List. It was, therefore, incumbent on WADA to make sure that athletes and their governing bodies were aware of and understood the potentially momentous change. Unfortunately, WADA failed to do so.

7 THE 2016 AUSTRALIAN OPEN AND COLLECTION OF THE SAMPLE

7.1 Maria competed in the 2016 Australian Open at Melbourne Park held from January 18–31, 2016, her first and only competition of 2016. She played on January 18, 20, 22, and 24 before she was eliminated from play in a Women’s Singles quarterfinal match on January 26.

7.2 Immediately following the match, she was approached by a doping-control officer and informed that she had been selected for a doping-control test. After her warm-down, the officer led her to a doping-control station where she completed a doping-control form and provided a urine sample. The sample was split into “A” and “B” components by the officer.

7A Laboratory Analysis of the A Sample

7.3 Maria’s sample was sent to Laboratoire de contrôle du dopage INRS-Institut Armand-Frappier (the “Montreal Laboratory”).

7.4 The Montreal Laboratory screened the A sample for the presence of Prohibited Substances on February 2–3, 2016. The screen indicated the presence of meldonium. The Montreal Laboratory took a further aliquot from the A sample and analyzed it on February 4, 2016 for confirmation. The Montreal Laboratory’s analysis of this aliquot confirmed the presence of meldonium in Maria’s A sample. On February 12, 2016, the Montreal Laboratory prepared a Certificate of Analysis and reported the results to the ITF the same day.

7B Maria’s Prompt Admission and Cooperation

7.5 By letter dated March 2, 2016, the ITF informed Maria that the urine sample she provided on January 26, 2016 had tested positive for meldonium.

7.6 By letter dated March 4, 2016, Maria waived the B sample analysis, accepting the presence of meldonium in her sample (and, consequently, the commission of an offense under Article 2.1 of
the TADP). Unaware of the addition of meldonium to the Prohibited List 2016 (and that Mildronate contained meldonium), she had taken Mildronate on the day she provided the sample.

7.7 On March 7, 2016, Maria held a press conference in Los Angeles, California, during which she publicly announced to the world that she had inadvertently committed an Anti-Doping Rule Violation.

7.8 The CAS lauded Maria for her honesty, noting in the CAS Decision that:

\[ \text{The Player took a public position acknowledging that she took Meldonium and that she accepted responsibility thereof, and she did so in a very public way, calling a press conference, on her own, that brought worldwide publicity to her case and to the use of Meldonium going forward.} \]

7C Hearings

7.9 The ITF Hearing took place on May 18–19, 2016, and the Tribunal published its written decision on June 8, 2016.

7.10 The CAS Hearing took place on September 8-9, 2016, and the Panel published its written decision on October 4, 2016.

8 MARIA’S ANTI-DOPING COMPLIANCE

8.1 It is important to understand that Maria is an extremely cautious person by nature and someone who has always taken her anti-doping obligations very seriously. The fact that this case has arisen at all is extraordinarily unfortunate. It did not, however, arise because of any cavalier or reckless conduct by Maria, as outlined below.

8A Dr. Skalny

8.2 From 2006 until 2013, at Maria’s direction, Dr. Skalny oversaw Maria’s compliance with her anti-doping obligations relating to the products he recommended for her. In his Medical Report, Dr.

\[ 86 \text{ CAS Decision, ¶93b.} \]

\[ 87 \text{ Skalny Rep., ¶24.} \]
Skalny states that everything he recommended to Maria was in compliance with WADA regulations.\textsuperscript{88}

8.3 Dr. Skalny explains in his report:

\begin{quote}
Because Maria is a professional tennis player, and a person with an acute attention to both detail and to her professional responsibilities, she was extraordinarily insistent that we did everything necessary in order to ensure her compliance with the WADA regulations. Yuriy was just as insistent. I fully shared their principled position on this issue.

For example, at Maria’s and her team’s request, from 2006 through 2012 each and every nutraceutical, medication, sports nutrition food, and supplement, including Magneroat, Mildronate, and Riboxin that I recommended to Maria as part of the rehabilitative corrective plan, was declared and approved for use by the Moscow Anti-doping Centre, accredited by WADA. In fact, in addition to checking the WADA Prohibited List myself, I would also personally go to the Anti-Doping facility, which was located close to both my office and house, to confirm that the substances remained permissible and to obtain certifications.

In addition, all new substances were purchased for Maria at standard pharmaceutical chains with receipts and permitting documents issued for every order, which was the general policy of Ms. Sharapova and her team.\textsuperscript{89}
\end{quote}

8.4 Notably, between 2006 and 2012, as a matter of course, Dr. Skalny sought and obtained certifications from the WADA-accredited Laboratory in Moscow that the products he recommended for Maria did not contain Prohibited Substances.\textsuperscript{90} Maria is not aware that any other athlete in the history of anti-doping has ever gone to such lengths to ensure the safety of the products they were using.

8.5 For any day-to-day issues that arose and required a quick answer, Maria utilized the services of her sports management firm – IMG. For instance, her agent, Max Eisenbud, would frequently use WTA anti-doping resources, and call or email the WTA’s Senior Vice President, Sport Sciences & Medicine and Transitions to determine the permissibility of any new products used by Maria to address certain ailments:\textsuperscript{91}

\begin{footnotes}
\footnotetext{88}{Id.}
\footnotetext{89}{Skalny Rep. ¶¶23-25.}
\footnotetext{90}{Skalny Rep. ¶24.}
\footnotetext{91}{Source: compilation of correspondence between Maria’s team and WTA officials/doctors.}
\end{footnotes}
<table>
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<tr>
<th>Date</th>
<th>Email</th>
<th>Response</th>
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| September 24, 2010  | From: Max Eisenbud  
To: Kathleen Stroia | From: Kathleen Stroia  
To: Max Eisenbud  
Max,  
That is correct that claritin is not on the banned list but claritin D is on the list due to the addition of the decongestant.  
Have a nice weekend.  
Kathleen |
| February 11, 2011   | From: Max Eisenbud  
To: Kathleen Stroia | From: Kerri Whitehead  
To: Max Eisenbud, Maria Sharapova  
Hello Maria and Max,  
Please note we have contacted our medical advisor, Dr. Walter Taylor to review the medication you noted below, Fexofenadine.  
He will review and provide us with a recommendation in regards to anti-doping regulations. I will let you know shortly whether this is an allowable prescription to consume and how to proceed.  
Expect to hear from me shortly. I hope you are feeling well soon.  
Kind Regards, Kerri |
|                     | From: Maria Sharapova  
To: Max Eisenbud | I need to check if I can take Fexofenadine (doc said I have bad ear infection) and its a decongestant.  
It has Sudofed so I'm not sure if I can take it. |

8.6 In 2013, Maria stopped consulting with Dr. Skalny altogether and sought to manage her health issues by consulting with a nutritionist. As she could no longer rely on Dr. Skalny to ensure that all her existing products remained compliant, she instituted a new system to observe her anti-doping obligations, and directed Max Eisenbud and IMG to oversee all of her compliance.
**IMG and Max Eisenbud**

8.7 IMG is one of the world’s largest and best known sports agencies.

8.8 Max Eisenbud is one of the world’s leading sports agents. Mr. Eisenbud has been described by CNN as “akin to football’s ‘super agents’ such as Jorge Mendes, who works with Cristiano Ronaldo and Jose Mourinho.”

8.9 Mr. Eisenbud’s work ethic and his relationship with Maria are well documented. In 2013, years before any of the events that are the subject of this arbitration, Maria praised Mr. Eisenbud in the CNN article: he “knows everything that’s going on,” “he does everything for me.” In another article, the New York Times observed, “[w]hen it comes to his prized client [Maria], no task is too menial for Eisenbud.”

8.10 Even while working with Dr. Skalny, Maria used IMG and Mr. Eisenbud for all elements of her anti-doping compliance except for the products that Dr. Skalny recommended. It was, therefore, both logical and entirely reasonable that IMG and Mr. Eisenbud spearhead Maria’s anti-doping compliance regimen when she stopped working with Dr. Skalny.

8.11 Mr. Eisenbud took a hands-on approach to ensuring Maria’s compliance with her anti-doping obligations. He initiated regular compliance-checks and continued using WTA anti-doping resources to determine the permissibility of certain products used by Maria as and when the need arose:

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93 Id.


95 In addition, Alex Schilling, an IMG Client Services Associate, regularly monitors Maria’s ADAMS account at Mr. Eisenbud’s direction and reviewed each of her lab tests in 2015.

96 Source: compilation of correspondence between Maria’s team and WTA officials/doctors.
<table>
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<th>Date</th>
<th>Email</th>
<th>Response</th>
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| December 7, 2014 | From: Max Eisenbud  
To: Kathleen Stroia  
See below.  
We were told we don't need approval, but just want to check. | From: Kathleen Stroia  
To: Max Eisenbud, Maria Sharapova  
Max and Maria,  
Please see Dr. Taylor’s response below. Hope this is effective in treating your injury.  
Let me know if we can assist with anything else.  
Kathleen |
|               | From: Jérôme Bianchi  
To: Maria Sharapova  
Cc: Max Eisenbud  
Due to an inflammation on the upper part of the ilio tibial band located just under the skin in the plain muscle(see the attached MRI), we ask you to autorise an injection of cortisone and xylocaine made with ultrasound control.  
This inflammation appeared during the Championships in Singapour and last till now.  
Waiting for your approval.  
Jerome Bianchi  
Envoyé de mon iPhone | From: Walter Taylor  
To: Kathleen Stroia  
First of all, since the injection of cortisone was performed out of competition there is no issue.  
If she is not playing in a WTA or ITF event until January she should be just fine.  
If she was in competition it depends if the injection was truly intramuscular vs tendon injection. The IT Band injection is usually placed in more of a tendon location and not intra-muscular.  
Intra-muscular cortisone injection is prohibited while in competition, whereas local tendon injection is not.  
I included this longer explanation so she would know there are differences with this medication depending on how it is administered and if it is done in vs out of competition.  
Walt |
|               | From: Maria Sharapova  
To: Jérôme Bianchi  
Mariome, just spoke to Max and he wants to send the WTA a description of injection I'm getting and which area exactly...that way they can confirm to us whether I need or don’t need an approval from anti doping.  
If you can please email this to Max, he will forward to WTA. Thanks |
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<tr>
<th>Date</th>
<th>Email</th>
<th>Response</th>
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| December 6, 2015| From: Maria Sharapova  
To: Kathleen Stroia  
Cc: Max Eisenbud  
Hi Kathleen,  
Hope you're well!  
Can you please ask the doctor if I am allowed to take  
Trimethobenzamide? It’s a medicine that was prescribed for me for a stomach bug.  
Thanks  
*Have a Sweet Day* | From: Kathleen Stroia  
To: Maria Sharapova  
Cc: Max Eisenbud  
Maria,  
Please see Dr. Taylor’s answer below. Hope you feel better soon.  
Kathleen |

8.12 Re-checking substances against the Prohibited List was also a component of Maria’s anti-doping compliance system, and one of Mr. Eisenbud’s tasks. Specifically, Maria asked him to confirm that three products – Magnerot, Mildronate, and Riboxin – long verified as permissible under the anti-doping rules by Dr. Skalny, remained permissible. Maria continued using those three over-the-counter products even after she stopped working with Dr. Skalny as Maria had always understood from Dr. Skalny that those three particular products – above all others – were particularly important for the protection of her heart and other ailments to which she was prone. Indeed, this had been a point emphasized to her time and time again by Yuriy during her career.

8.13 Mr. Eisenbud searched the 2014 and 2015 Prohibited Lists for “Magnerot,” “Mildronate,” and “Riboxin,” understanding, based on how the supplements were listed on the certifications Maria had received from the WADA-accredited laboratory, those words to represent chemical names, not brand names. Seeing none of these on the Prohibited List and knowing Dr. Skalny had confirmed the permissibility of Magnerot, Mildronate, and Riboxin for years, Mr. Eisenbud concluded they were safe to use.

8.14 Because Mr. Eisenbud merely confirmed what Maria had always known – that Magnerot, Mildronate, and Riboxin were not prohibited – he did not report his non-findings to her. Notably, in 2013, Mr. Eisenbud commented to CNN that “I know when to bring things to her
[Maria]. . ., and when she needs to stay focused some more, so it’s not distracting her tennis. I think that’s kind of my skill.” Maria confirmed this aspect of their relationship to Harvard:

Sharapova acknowledged she focused on the big picture in business discussions: “It is really the team that makes the decisions—my parents, my coaches, and my agent, I oversee it. If I were involved in all the many little decisions, I would never have time to play tennis.”

8C  Checking the 2016 Prohibited List

8.15  For reasons outside of her control, Maria’s system failed in late 2015 and her supplements were not checked against the WADA 2016 Prohibited List.

8.16  Having not heard anything new regarding Magnerot, Mildronate, and Riboxin – and, indeed, not expecting to, given her long and uneventful history of using those products – Maria continued to believe that it was safe for her to continue using those products.

8D  The extent and effectiveness of Maria’s anti-doping system

8.17  While Maria’s anti-doping compliance efforts faltered in late 2015, they had always previously been flawless.

8.18  Dr. Skalny worked closely with a WADA-approved laboratory to ensure that anything he recommended to Maria was safe to use. In recent years, Maria entrusted her anti-doping compliance efforts to her long-time agent Max Eisenbud and IMG – one of the world’s largest and best resourced sports agencies. Mr. Eisenbud worked closely with the WTA to ensure compliance (as evidenced by his email exchanges with the WTA).

8.19  Maria accepts and deeply regrets that she inadvertently committed an anti-doping rule violation. While she believed she had a system in place that was proper, it failed in late 2015, and for that, she takes responsibility.

97  Morley, n. 92 supra.

8.20 It is also unfortunate, however, that the ITF, WADA, and the WTA did so very little to make Maria (and others) aware that meldonium was placed on the Prohibited List.

8.21 While Maria is pleased that the CAS has acknowledged that she is not a cheater, corrected many of the unfair attacks lodged at her in the ITF Decision, and reduced her period of ineligibility, her suspension, on its own, has inflicted significant damage to Maria’s career.

8.22 It is Maria’s sincere hope and intention that by publicizing the events surrounding her violation and shedding light on the ways in which it could have easily been avoided, that she will help other athletes avoid a similar fate.