

JANUARY 28, 2011

**BY HAND DELIVERY**

Mr. Akin Suel  
President, Disciplinary Board of Turkish Basketball Federation  
ABDI İPEKÇI SPOR MERKEZİ  
10.YIL CADDESİ  
34760 ZEYTİNBURNU  
İSTANBUL  
TÜRKİYE

Re: Diana Taurasi, 13 November 2010 Drug Test, Sample #2491653

Dear Mr. Suel:

Diana Taurasi, through the undersigned, submits her written defense, as follows:

**1. GENERAL STATEMENT**

1.1 Diana Taurasi denies that she has ever knowingly taken any prohibited substances, and specifically denies ever knowingly taking either modafinil or any substance that could cause a positive test for "modafinil metabolite." To prove this fact, she voluntarily submitted to a polygraph examination on January 18, 2011. The polygraph examination was conducted by John Fritz, a forensic polygraph examiner; a former Special-Agent Counterintelligence, United States Department of Defense; and a former member of the Chicago Police Department. The results were verified by John Fritz and by Rosemarie Urbanski, also a forensic polygraph examiner. The polygraph examination determined that Diana Taurasi was truthful when she stated that she has never taken modafinil or any generic version of the drug modafinil.

A copy of the polygraph examination report is enclosed herewith.

**2. THE LABORATORY DOCUMENTATION DOES NOT PROPERLY ESTABLISH AN ADVERSE ANALYTICAL FINDING FOR MODAFINIL**

2.1 The Turkish Basketball Federation Doping Rules (hereinafter referred to as "TBF Doping Rules") specify that all urine samples must be tested and reported in accordance with the World Anti-Doping Agency's ("WADA")

HV ✓

International Standards. See TBF Doping Rules 24.2, 24.6, and 25.4. The World Anti-Doping Code specifies the manner in which it must be established that a urine sample was tested and reported in accordance with WADA's International Standards. The burden of proof in an anti-doping case is a multi-step process with a shifting burden.

2.1.1 First, the Anti-Doping Organization, in this case TBF, "shall have the burden of establishing that an anti-doping rule violation has occurred." World Anti-Doping Code, Art. 3.1.

2.1.2 Once the Anti-Doping Organization introduces evidence of an anti-doping violation from a WADA-accredited laboratory, the results are presumed correct. See World Anti-Doping Code, Art. 3.2.1.

2.1.3. The athlete is then entitled to rebut this presumption by establishing that a departure from the International Standard occurred. *Id.* ("The Athlete may rebut this presumption by establishing that a departure . . . occurred which could reasonably have caused the Adverse Analytical Finding."); see World Anti-Doping Code, Art. 3.2.1. The athlete must demonstrate any departure by a "balance of probability." World Anti-Doping Code, Art. 3.1 ("the burden of proof upon the Athlete . . . shall be by a balance of probability.").

2.1.4. Once the presumption is rebutted by showing a departure, the Anti-Doping Organization "shall have the burden to establish that such departure did not cause the Adverse Analytical Finding." World Anti-Doping Code, Art. 3.2.1.

2.1.5. To meet its burden, the Anti-Doping Organization must present evidence of an anti-doping violation to the "comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made." World Anti-Doping Code, Art. 3.1.

2.2 The Laboratory Documentation fails to establish complete chain of custody of the urine sample 2491653, in violation of the WADA International Standard for Laboratories ("ISL").

2.2.1 The laboratory documentation fails to document where the sample was from the date of collection until the date that the sample was deposited with the courier.

2.2.1.1 The urine sample 2491653 was collected on November 13, 2010.

H ✓

2.2.1.2 The laboratory documentation establishes that the urine sample 2491653 was deposited with the courier (Yurtici Kargo) on November 15, 2010, at 10:50.

2.2.1.3 There is no documentation or explanation provided of where urine sample 2491653 was between the date of collection (November 13, 2010) and the date that the sample was deposited with the courier (November 15, 2010).

2.2.1.4 "To ensure that the urine tested suffered no contamination, tampering, or mislabeling, the chain of custody begins at the collection site and ends with the final report ... The control system must guarantee integrity of the specimens from the moment of submission of the urine until the conclusion of the analysis. Each transfer must be documented, including within-laboratory transfers ... The laboratory must be able to give exact documentation on such details as where a certain sample was located at a given time and the identity of the person handling the sample at the time in question." Catlin, Cowan, Donike et al., "Testing Urine for Drugs," International Federation of Clinical Chemistry (1992).

2.2.1.5 "There are two parts involved in the chain of custody for an individual Sample... The external record is initiated at the collection site and ensures that the Samples and the results generated by the Laboratory can be unequivocally linked to the Athlete. The Laboratory Internal Chain of Custody records are maintained within the Laboratory to record the testing process and the location of the Sample during testing ... The chain of custody, along with relevant testimony from individuals documented on the chain of custody documents, should provide a complete record of the Sample or Aliquot location." WADA Technical Document TD2003LCOC [LABORATORY INTERNAL CHAIN OF CUSTODY].

2.2.1.6 Because there is no documentation to establish where the urine sample 2491653 was between the date of collection (November 13, 2010) and the date that the sample was deposited with the courier (November 15, 2010), the doping charge must be dismissed, and the athlete exonerated.

2.2.2 The laboratory documentation fails to document where the sample was from the date that it was deposited with the courier until the date that it arrived at the laboratory.

2.2.2.1 The laboratory documentation establishes that the urine sample 2491653 was deposited with the courier (Yurtici Kargo) on November 15, 2010, at 10:50.

2.2.2.2 The laboratory documentation establishes that the urine sample 2491653 arrived at the laboratory in Ankara on November 22, 2010.

2.2.2.3 There is no documentation or explanation provided of where urine sample 2491653 was between the date that it was deposited with the courier (November 15, 2010) and the date that it arrived at the laboratory in Ankara (November 22, 2010), a full week later. There is also no explanation for why the transport took one full week.

2.2.2.4 Because there is no documentation to establish where the urine sample 2491653 was between the date that it was deposited with the courier (November 15, 2010) and the date that it arrived at the laboratory in Ankara (November 22, 2010), a full week later, the doping charge must be dismissed, and the athlete exonerated.

2.2.3 The laboratory documentation fails to properly document any movements of urine sample 2491653 within the laboratory in Ankara.

2.2.3.1 ISL 3.2 defines Laboratory Internal Chain of Custody as: "Documentation of the sequence of Persons in possession of the Sample and any portions of the Sample taken for Testing. [Comment: Laboratory Internal Chain of Custody is generally documented by a written record of the date, location, action taken, and the individual performing an action with a Sample or Aliquot.]"

2.2.3.2 WADA ISL 5.2.2.2 requires that: "The Laboratory shall have Laboratory Internal Chain of Custody procedures to maintain control of and accountability for Samples from receipt through final disposition of the Samples. The procedures shall incorporate the concepts presented in the applicable WADA Technical Document for Laboratory Internal Chain of Custody."

2.2.3.3 That WADA Technical Document, WADA TD2009LCOC, states, in pertinent part as follows:

2.2.3.3.1 "The Laboratory Internal Chain of Custody records are maintained within the Laboratory to record the



Analytical Testing process and the traceability of the Sample during Analytical Testing.”

2.2.3.3.2 “The Laboratory Internal Chain of Custody is documentation (worksheets, logbooks, forms, etc.) that records the custody of Samples and Sample Aliquots during analysis.”

2.2.3.3.3 “All entries into the Laboratory Internal Chain of Custody shall be completed at the time that any change of custody occurs and by the personnel involved.”

2.2.3.3.4 “A chain of custody is required for both “A” and “B” Sample bottles and every Aliquot prepared for an Analytical Testing procedure.”

2.2.3.3.5 “In the case of Samples, the Laboratory Internal Chain of Custody shall record all custody from receipt in the Laboratory through storage and sampling to disposal. Details should also include the unique identifier of each cold storage unit (freezer or refrigerator identification) used to store the Sample(s).”

2.2.3.3.6 “In the case of Aliquots, the Laboratory Internal Chain of Custody shall record all custody from preparation through analysis, including the date, the test for which the aliquot was taken, the Laboratory Aliquot identification, the identity of the individual(s) preparing the Aliquot(s) and the individual(s) obtaining the Aliquot(s) for analysis.”

2.2.3.4 The laboratory documentation provided by the laboratory at Ankara fails to properly document any of these movements of the bottle or aliquots. There is no separate documentation establishing any movements of sample 2491653 (or aliquots) within the laboratory. There is no documentation to establish where the sample 2491653 was stored at all times within the laboratory, or when it was disposed of. There is no documentation that establishes custody of all aliquots of sample 2491653 from point of preparation through analysis. Therefore, the doping charge must be dismissed, and the athlete exonerated.

2.3 The laboratory at Ankara has failed to properly identify modafinil according to the WADA Technical Documents, because the laboratory data

demonstrates an unacceptable variation in retention time between the positive controls and the athlete sample 2491653.

2.3.1 WADA Technical Document TD2010IDCR [IDENTIFICATION CRITERIA FOR QUALITATIVE ASSAYS INCORPORATING COLUMN CHROMATOGRAPHY AND MASS SPECTROMETRY], at paragraph 2.2, provides that "For high performance liquid chromatography, the [retention time] RT of the analyte shall not differ by more than two (2) percent or  $\pm 0.1$  minutes (whichever is smaller) from that of the same substance in a spiked urine sample, Reference Collection sample, or Reference Material analyzed in the same analytical batch."

2.3.2 The retention time for the "A" sample screen of sample 2491653 differs by more than 2 percent from the reference standard, in violation of WADA Technical Document TD2010IDCR.

2.3.2.1 The chromatogram for the positive control urine is contained at page *sekil* iv.1.6, and shows the following:

2.3.2.1.1 A peak for the ion transition  $m/z$  167>167 at a retention time of 1.55 minutes;

2.3.2.1.2 A peak for the ion transition  $m/z$  167>165 at a retention time of 1.54 minutes; and

2.3.2.1.3 A peak for the ion transition  $m/z$  167>152 at a retention time of 1.55 minutes.

2.3.2.2 2 percent of 1.54 – 1.55 minutes is 0.03 minutes. Therefore, to comply with WADA Technical Document TD2010IDCR, the retention time for the 3 ions in the screening test of "A" sample 2491653 must be within the following ranges:

2.3.2.2.1 For ion transition  $m/z$  167>167, within the range of 1.52 – 1.58 minutes;

2.3.2.2.2 For ion transition  $m/z$  167>165, within the range of 1.51 – 1.57 minutes

2.3.2.2.3 For ion transition  $m/z$  167>152, within the range of 1.52 – 1.58 minutes.

HV ✓

2.3.2.3 The chromatogram for "A" sample screen for sample 2491653 (lab code D10 03212 A) is contained at page sekil iv.1.7, and shows the following:

2.3.2.3.1 A peak for the ion transition  $m/z$  167>167 at a retention time of 1.51 minutes, which is outside of the acceptable range as defined by WADA Technical Document TD2010IDCR;

2.3.2.3.2 A peak for the ion transition  $m/z$  167>165 at a retention time of 1.51 minutes; and

2.3.2.3.3 A peak for the ion transition  $m/z$  167>152 at a retention time of 1.50 minutes, which is outside of the acceptable range as defined by WADA Technical Document TD2010IDCR.

2.3.2.4 Because 2 of the 3 diagnostic ions for modafinil utilized by the laboratory in Ankara failed to comply with paragraph 2.2 of the WADA Technical Document TD2010IDCR on the screening analysis of sample 2491653, the laboratory has failed to properly identify modafinil in the screening analysis.

2.3.3 The retention time for the "A" sample confirmation of sample 2491653 differs by more than 2 percent from the reference standard, in violation of WADA Technical Document TD2010IDCR.

2.3.3.1 The chromatogram for the positive control urine is contained at page sekil iv.2.7, and shows the following:

2.3.3.1.1 A peak for the ion transition  $m/z$  167>167 at a retention time of 1.54 minutes;

2.3.3.1.2 A peak for the ion transition  $m/z$  167>165 at a retention time of 1.55 minutes; and

2.3.2.1.3 A peak for the ion transition  $m/z$  167>152 at a retention time of 1.55 minutes.

2.3.3.2 2 percent of 1.54 – 1.55 minutes is 0.03 minutes. Therefore, to comply with WADA Technical Document TD2010IDCR, the retention time for the 3 ions in the confirmation test of "A" sample 2491653 must be within the following ranges:

H ✓

2.3.3.2.1 For ion transition  $m/z$  167>167, within the range of 1.51 – 1.57 minutes;

2.3.3.2.2 For ion transition  $m/z$  167>165, within the range of 1.52 – 1.58 minutes

2.3.3.2.3 For ion transition  $m/z$  167>152, within the range of 1.52 – 1.58 minutes.

2.3.3.3 The chromatograms for “A” sample confirmation for sample 2491653 (lab code D10 03212 A) are contained at page sekil iv.2.5 and sekil iv.2.6, and show the following:

2.3.3.3.1 A peak for the ion transition  $m/z$  167>167 at a retention time of 1.50 and 1.49 minutes, which are both outside the acceptable range as defined by WADA Technical Document TD2010IDCR;

2.3.3.3.2 A peak for the ion transition  $m/z$  167>165 at a retention time of 1.50 and 1.51 minutes, which are both outside the acceptable range as defined by WADA Technical Document TD2010IDCR; and

2.3.3.3.3 A peak for the ion transition  $m/z$  167>152 at a retention time of 1.50 minutes, which is outside of the acceptable range as defined by WADA Technical Document TD2010IDCR.

2.3.3.4 Because all 3 diagnostic ions for modafinil utilized by the laboratory in Ankara failed to comply with paragraph 2.2 of the WADA Technical Document TD2010IDCR on the “A” confirmation analysis of sample 2491653, the laboratory has failed to properly identify modafinil in the “A” confirmation analysis.

2.3.4 The retention time for the “B” sample confirmation of sample 2491653 differs by more than 2 percent from the reference standard, in violation of WADA Technical Document TD2010IDCR.

2.3.4.1 The chromatogram for the positive control urine is contained at page sekil vi.1.8, and shows the following:

2.3.4.1.1 A peak for the ion transition  $m/z$  167>167 at a retention time of 1.53 minutes;





2.3.4.1.2 A peak for the ion transition  $m/z$  167>165 at a retention time of 1.54 minutes; and

2.3.4.1.3 A peak for the ion transition  $m/z$  167>152 at a retention time of 1.54 minutes.

2.3.4.2 2 percent of 1.53 – 1.54 minutes is 0.03 minutes. Therefore, to comply with WADA Technical Document TD2010IDCR, the retention time for the 3 ions in the confirmation test of “B” sample 2491653 must be within the following ranges:

2.3.4.2.1 For ion transition  $m/z$  167>167, within the range of 1.50 – 1.56 minutes;

2.3.4.2.2 For ion transition  $m/z$  167>165, within the range of 1.51 – 1.57 minutes

2.3.4.2.3 For ion transition  $m/z$  167>152, within the range of 1.51 – 1.57 minutes.

2.3.4.3 The chromatograms for “B” sample confirmation for sample 2491653 (lab code D10 03212 A) are contained at page sekil vi.1.4 and sekil vi.1.5, and show the following:

2.3.4.3.1 A peak for the ion transition  $m/z$  167>167 at a retention time of 1.47 minutes, which is outside of the acceptable range as defined by WADA Technical Document TD2010IDCR;

2.3.4.3.2 A peak for the ion transition  $m/z$  167>165 at a retention time of 1.49 and 1.47 minutes, which are both outside the acceptable range as defined by WADA Technical Document TD2010IDCR; and

2.3.4.3.3 A peak for the ion transition  $m/z$  167>152 at a retention time of 1.49 and 1.47 minutes, which are both outside the acceptable range as defined by WADA Technical Document TD2010IDCR.

2.3.4.4 Because all 3 diagnostic ions for modafinil utilized by the laboratory in Ankara failed to comply with paragraph 2.2 of the WADA Technical Document TD2010IDCR on the “B” confirmation analysis of sample 2491653, the laboratory has failed to properly identify modafinil in the “B” confirmation analysis.

HV ✓

### 3. RESERVATION OF ADDITIONAL DEFENSES

3.1 Diana Taurasi only received the laboratory documentation package from the Turkish Basketball Federation on January 26, 2011, which provided insufficient time to fully review and analyze the documentation package. Diana Taurasi reserves the right to submit any and all additional defenses that may arise from a further review of the laboratory documents in this case.

3.2 Diana Taurasi has not had sufficient time to investigate possible causes of the alleged positive test, and reserves the right to argue that the alleged Adverse Analytical Finding (if proven, which is contested by Diana Taurasi) was the result of No Fault or Negligence on her part (see Turkish Basketball Federation Anti-Doping Regulation, Article 3.5.1; World Anti-Doping Code, Article 10.5.1); or was the result of No Significant Fault or Negligence on her part (see Turkish Basketball Federation Anti-Doping Regulation, Article 3.5.1; World Anti-Doping Code, Article 10.5.2).

3.3 Diana Taurasi reserves the right to raise additional defenses or arguments after she has had an adequate time for investigation.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

  
Howard L. Jacobs

cc: Diana Taurasi (via e-mail)