

play true

Results Management and Determining Appropriate Sanctions

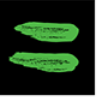
Results Management Webinars – June 2020

Tharinda Puth, Manager, Legal Affairs, WADA

The presentation will start shortly.



Outline



Webinar 1

- Anti-Doping Rule Violations
- Results Management Process
- Departures from Standards and Fundamental Breaches

Webinar 2

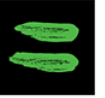
Determining Appropriate Sanctions

- Basic Sanctions
- Intention
- No Fault
- No Significant Fault
- Contamination Cases Other Reductions
- Substantial Assistance



The Anti-Doping Rule Violations

The Anti-Doping Rule Violations



Art. 2.1 – Presence

Art. 2.2 – Use/Attempted Use

Art. 2.3 – Evading, Refusing or Failing to Submit to Sample Collection

Art. 2.4 – Whereabouts Failures

Art. 2.5 – Tampering or Attempted Tampering with any part of Doping Control

Art. 2.6 – Possession

Art. 2.7 – Trafficking or Attempted Trafficking

Art. 2.8 – Administration or Attempted Administration

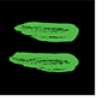
Art. 2.9 – Complicity (*Attempted Complicity – 2021 Code*)

Art. 2.10 – Prohibited Association

(*Art. 2.11 – Protection of Whistleblowers – 2021 Code*)

Art. 2.1 – Presence

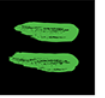
Art. 2.2 – Use / Attempted Use



The Strict Liability Principle

“It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly it is not necessary that intent, Fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an ADRV.”

2.3 – Evading, Refusing or Failing to Submit



“Evading Sample collection, or **without compelling justification, refusing** or failing to submit to Sample collection after notification as authorised in applicable anti-doping rules.”

2.4 - Whereabouts Failures



ADAMS Cuseley, Paul from UKAD : Help : Logout

GO BACK WHEREABOUTS ADDRESS BOOK

Athlete, Dummy + Calendar View List View History Notes & Activities Last Updated 25-Jan-2013 15:32 GMT by Athlete, Dummy

2013-Q1 Status: Submitted

Mailing Address
Whereabouts Guide ?
Filter By: +
2013-Q1 -Submitted -

March 2013 Day Week Month Print

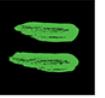
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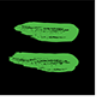
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31

Art. 2.5 – Tampering / Attempted Tampering

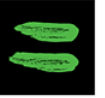


“Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing, misleading or engaging in any fraudulent conduct to alter results or prevent normal procedures from occurring.”

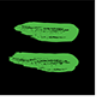
Art. 2.6 – Possession / Attempted Possession



Art. 2.7 – Trafficking / Attempted Trafficking

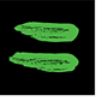


Art. 2.8 – Administration / Attempted Administration



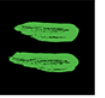
“**Providing, supplying, supervising, facilitating, or otherwise participating** in the Use or Attempted Use by another Person of a Prohibited Substance or Prohibited Method. However, **this definition shall not include the actions of bona fide medical personnel involving a Prohibited Substance or Prohibited Method used for genuine and legal therapeutic purposes** or other acceptable justification and shall not include actions involving Prohibited Substances which are not prohibited in Out-of-Competition Testing unless the circumstances as a whole demonstrate that such Prohibited Substances are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance.”

Art. 2.9 – Complicity



“Assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional complicity involving an anti-doping rule violation, Attempted anti-doping rule violation or violation of Article 10.12.1 by another Person.”

Art. 2.10 – Prohibited Association



“it is necessary that the Athlete or other Person has previously been advised in writing by an Anti-Doping Organization with jurisdiction over the Athlete or other Person, or by WADA, of the Athlete Support Person’s disqualifying status and the potential Consequence of prohibited association and that the Athlete or other Person can reasonably avoid the association”

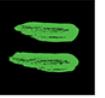


Questions?



The Results Management Process

Definition of Results Management



Based on the definition of Results Management in the 2021 Code and the new International Standard for Results Management.

**Initial
Review**

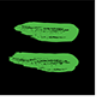
**First
Notification**

**Notice of
Charge**

**First
Instance**

**Appeal
(if any)**

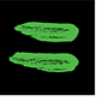
Who is responsible for the case and what rules apply?



Article 7 of the Code

- Analytical cases: Anti-Doping Organization (ADO) that initiated sample collection (art. 7.1)
- Non-Analytical cases: ADO that first provides notice (art. 7.7)
- Whereabouts: ADO that receives athlete's whereabouts (art. 7.6)
- Particular cases for athlete biological passport, major events, foreign athletes.

Analytical cases: the initial review

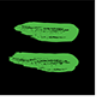


A lab informs you of an Adverse Analytical Finding (AAF), then what?

- **Identify athlete:** Match sample number with lab report
- **TUE?:** Look at substance, concentration, prescription from athlete.
- **Departure from IS?:** Any notes on DCF, lab report? Investigate!
- **Authorized Route (S9) :** Any indication of administration route?

Look at the information critically: **don't hesitate to investigate further!**

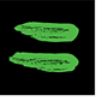
Reminder



Art. 7.3 of the Code: “If the Anti-Doping Organization decides not to bring forward the Adverse Analytical Finding as an anti-doping rule violation, it shall so notify the Athlete and the Anti-Doping Organizations as described in Article 14.1.2.”

So, please don't forget to send all decisions (including the ones rendered following the initial review) to WADA and the relevant anti-doping organizations.

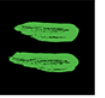
The Notification



It is essential that notifications be sent promptly and confidentially

- Content (art. 7.3 and 14.1.3): Athlete details, ADRV, B-sample rights, etc.
- Recipients (art. 14.1.2): Athlete, WADA (rm@wada-ama.org), IF, NADO/RADO
- Substantial assistance (art. 10.6.1) and prompt admission (art. 10.6.3)
- Provisional suspension if applicable

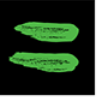
Imposing provisional suspensions



Art. 7.9

- Provisional suspensions **protect the integrity of competitions** by preventing athletes likely to be suspended from taking part in them.
- They are imposed **after the initial review and notification**, and **can be challenged** by the athlete in a provisional hearing.
- Athletes may also **voluntarily accept** provisional suspensions and benefit from an earlier date of commencement of suspension.

Lifting provisional suspensions



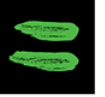
Under certain circumstances, the provisional suspension **can be lifted** by the result management authority or the provisional hearing panel:

- B-sample does not confirm A-sample (**must** be lifted)
- Contaminated product (for ex., clenbuterol)
- Charge has no chance of success (e.g., patent flaw in the case)
- Strong possibility that no period of ineligibility will be imposed
- Other elements that make it unfair to the athlete



Departures from Standards and Fundamental Breaches in Practice

Departures from Standards



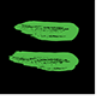
Code Article 3.2.2

«WADA-accredited laboratories, and other laboratories approved by WADA, are **presumed to have conducted Sample analysis and custodial procedures in accordance with the [ISL]**.

The Athlete or other Person may rebut this presumption **by establishing that a departure from the [ISL] occurred which could reasonably have caused the adverse analytical finding**.

If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the ISL occurred which could reasonably have caused the adverse analytical finding, **then the anti-doping organization shall have the burden to establish that such departure did not cause the adverse analytical finding.**»

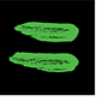
Departures from Standards



Code Article 3.2.3

*“If the Athlete or other Person **establishes a departure from another International Standard or other anti-doping rule or policy** which **could reasonably have caused an anti-doping rule violation** based on an adverse analytical finding or other anti-doping rule violation, then the **anti-doping organization shall have the burden to establish that such departure did not cause the adverse analytical finding** or the factual basis for the anti-doping rule violation.”*

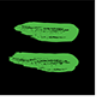
Departures from Standards



Meaning of “could reasonably have caused”

- **IAAF v Da Silva, CAS 2012/A/2779:** *“the Athlete has also failed to adduce expert evidence proving that any departure from the IST, ISL or Anti-Doping Regulations during the sample collection process led, or would reasonably have led to the adverse analytical finding.*
- **Veerpalu v FIS, CAS 2011/A/2566:** *“given that the Test was performed by a WADA-accredited laboratory, the Appellant has to show that it is more likely than not that any deviation from the ISL could have caused a false positive finding. Only if the Appellant can establish this would the burden of proof shift to the Respondent”).*
- **Arashov v. ITF CAS 2017/A/5112:** *“Article 3.2 of the Code does not require the Athlete to prove that the departure did cause the AAF, but rather that it “could reasonably have caused” the AAF.”*

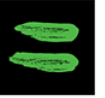
Departures from Standards



World Rugby v. Chiliboy Ralepelle (WR Judicial Committee - 15 June 2015)

- Breaking B bottle when removing seal
- Urine recovered in frozen form and placed in another vessel
- Departure but could not reasonably have caused the AAF. No realistic contamination scenario: Elements relied on:
 - B sample opening equipment could not have contained drostanolone (as no B sample with that substance had been analysed).
 - Could not have come from laboratory analyst who recovered frozen urine – sterilised gloves and only handled the positive quality control after
 - A sample and B sample concentrations were the same
 - The amount of the contaminant would have been visible
 - In the end, the Panel did not find contamination impossible but nearly: the probability was «*akin to the chance of the sun not rising tomorrow.*»

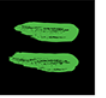
Departures from Standards



CAS 2014/A/3487 Veronica Campbell-Brown v. JAAA & IAAF

- AAF for HCTZ
- Failure to follow partial sample protocol
- Athlete left with initial collection vessel – lack of supervision
- Lid removed when athlete provided additional urine
- Collection vessel had spout through which sweat or water could pass
- Expert evidence of water contamination with HCT (due to use in medication for high blood pressure).
- Prevalence of positive for HCT for doping controls at that venue (certain of which followed partial samples not collected in accordance with ISTI)

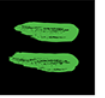
Departures from Standards



Other examples

- *CAS 2014/A/3487 Veronica Campbell-Brown v. JAAA & IAAF*
- *IAAF v/ Asbel Kiprop (IAAF Disciplinary Tribunal)*
- *CAS 2010/A/2110 IAAF v. CAF & Johanna Trivino-Urrutia*
- *CAS 2018/A/5584 Adrien Zielinski v/ IWF*
- *CAS 2018/A/5990 WADA v. SAIDS & Visser*
- *CAS 2019/A/6155 WADA v. NADA & Inderjeet Singh*

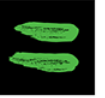
Departures from Standards



Types of Departures

- **Sample collection:**
 - Failure to properly notify
 - Failure to monitor sample
 - Failure to follow partial sample protocol
- **Transportation / External Chain of Custody**
 - Length of time for transportation
 - Failure to ensure appropriate temperature
 - No detailed requirements (TD, ISTI)
- **Analytical and Internal Chain of Custody**

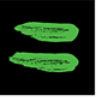
Departures from Standards



Conclusions

- Alleged departures should be **critically evaluated**, in particular with respect to causation of the AAF
- Whereas the causation must only be plausible, it is important to consider each individual departure in isolation
- **Departures often raised but rarely succeed in negating the ADRV**
 - This is hardly surprising in view of the various checks and balances in the system
 - Signature of DCF
 - Sealing of sample – verification of seal
 - Documentation of chain of custody
 - Repeated analyses etc.

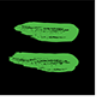
Fundamental Breaches



CAS 2008/A/1607 Kaisa Varis v. International Biathlon Union (IBU)

- Ms. Varis claimed her representative was not available on the date proposed by the IBU for B-Sample analysis.
- Her requests for a postponement (and those of her counsel) were ignored by the IBU and the B-Sample opening went ahead without the athlete, her representative or an independent witness being present.
- Panel held that “*nothing was, in fact, done to accommodate the athlete’s request for a different testing date*”.

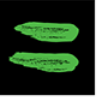
Fundamental Breaches



CAS 2018/O/5754 Sergey Fedorovtsev v. RUSADA & WADA & FISA

- Athlete and expert were asked to leave at lunch
- Samples already loaded in the machine but sequence initiated after
- Came back to laboratory after calls with wife
- Panel found that athlete and expert had left the laboratory with no plan to return until the results were ready
 - No complaint at the time; no follow-up and not even the first defence
 - No questions about when they could return; how long lunch would last
 - Contradictions in the version of the athlete and expert
- As they effectively left voluntarily, there was no breach

Fundamental Breaches



Conclusions

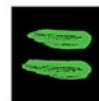
- Applied in practice only to breach of B sample rights and then only a serious breach
 - Less and less prevalent – only once under 2015 Code
- Always best to charge 2.2 in case a departure or fundamental breach negates the 2.1 charge



QUESTIONS?

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THANK YOU



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