



2021 Code Implementation Support Program
**Guidelines for the International
Standard for Results Management**

GUIDELINES FOR RESULTS MANAGEMENT

Contents

Welcome to the Guidelines for Results Management.....	5
SECTION 1: RESULTS MANAGEMENT BASICS	8
C H A P T E R 1 : Who is in charge of results management and how	9
1. Responsible ADO	10
2. Governing rules	11
3. Clarification on specific authority issues	11
4. Disputes	15
5. Results Management as directed by WADA.....	15
C H A P T E R 2 : Initial Considerations	16
1. Ensuring confidentiality	16
2. Ensuring timeliness.....	17
3. Applying the statute of limitations.....	17
SECTION 2: PRE-HEARING PHASE	19
C H A P T E R 3 : How to review cases	20
1. Reviewing Adverse Analytical Findings	20
2. Reviewing Atypical Findings	37
3. Reviewing Athlete Biological Passport Findings	40
4. Reviewing Whereabouts Failures and Whereabouts Violations	45
5. Reviewing other Anti-Doping Rule Violations.....	50
C H A P T E R 4 : How to impose provisional suspensions	56
1. Imposing mandatory Provisional Suspensions	57
2. Imposing optional Provisional Suspensions.....	58
3. Dealing with voluntary Provisional Suspensions	60

4.	Dealing with Provisional Suspensions and Contaminated Products.....	61
5.	Dealing with other Provisional Suspension formalities and implications	62
CHAPTER 5 : What is the charge letter		65
1.	Drafting a charge letter	66
2.	Considering the procedural options.....	68
SECTION 3: ADJUDICATION PROCESS.....		70
CHAPTER 6 : How to enter into results management agreements		71
1.	One-year reduction and acceptance of sanction.....	71
2.	Case Resolution Agreements.....	72
CHAPTER 7 : How to prepare for hearings.....		74
1.	Understanding pre-hearing matters and the hearing process.....	74
2.	Conducting fair hearings	77
3.	Event hearings.....	85
4.	Waiver of hearing	86
CHAPTER 8 : What to include in a decision		88
1.	Respecting the timing	88
2.	Drafting the decisions	89
3.	Notifying decisions to relevant parties	91
4.	Publicly disclosing the decisions	92
5.	Following the decisions – the RMA’s responsibilities	95
CHAPTER 9 : What to know about appeals.....		100
1.	Understanding the basics.....	100
2.	Respecting deadlines	102
3.	Notifying relevant parties	102
4.	Appealing to the Court of Arbitration for Sport	103
5.	Appealing to the Swiss Federal Tribunal	104

SECTION 4: SUBSTANTIAL ASSISTANCE.....	105
1. Understanding the basics.....	106
2. Evaluating cases	108
3. Understanding WADA’s role – WADA’s discretionary powers.....	113
4. Reinstating full consequences.....	113
ANNEX A : Checklist for Adverse Analytical Findings Report	115
ANNEX B : Investigation of Atypical Findings.....	121
ANNEX C : Chart: Results Management Process - Adverse Analytical Findings (AAF)	126
ANNEX D : Chart: Athlete Passport Process.....	127
ANNEX E : Chart: Results Management Process – Whereabouts (WF)	128

Welcome to the Guidelines for Results Management

Introduction

Welcome to the Guidelines for Results Management (Guidelines), a third-level, non-mandatory document that supports the International Standard for Results Management (ISRM). These Guidelines aim to better equip Anti-Doping Organizations (ADOs) in conducting results management as described in the ISRM. Where the ISRM sets forth a minimum of what to do, these Guidelines aim to help you understand how to do it and giving you examples and suggestions.

Context

The Signatories to the World Anti-Doping Code (Code) recognize that efficient and effective Results Management is key to the fight against doping in sport. They also recognize that this process shall be conducted in accordance with the principles set out in the Code and the International Standards (IS).

Previously, and in the absence of a specific International Standard applicable to Results Management, the World Anti-Doping Agency (WADA) had prepared, in conjunction with several key stakeholders, a Results Management, Hearing and Decisions Guidelines document, which was intended to harmonize the practice of Anti-Doping Organizations (ADOs) in Results Management.

However, within the context of the review process of the 2021 Code, WADA developed the International Standard for Results Management (ISRM), which, from 1 January 2021 onwards, will be the document that addresses the technical and operational aspects of Results Management and must be adhered to by all Signatories in order to ensure their compliance with the Code.

Nevertheless, in order to assist Signatories and other stakeholders in the area of Results Management, WADA has updated the previous version of the Results Management, Hearing and Decisions Guidelines in accordance with the 2021 Code and ISRM so that continued guidance and models remain available.

The term Results Management, as defined in the Code, is the process encompassing the timeframe between notification as per ISRM Article 5, or, in certain cases, (e.g., Atypical Finding, Athlete Biological Passport, whereabouts failures), such pre-notification steps expressly provided for in ISRM Article 5, through the charge until final resolution of the matter, including the end of the hearing process at first instance or on appeal (if an appeal was lodged).

How to use the Guidelines

These Guidelines provide guidance regarding the steps of the Results Management process, but also guidance with respect to Substantial Assistance, Results Management and Case Resolution Agreements, and recommendations regarding the hearing process and the resultant decision.

These Guidelines are not designed to assist in the assessment and/or review of the merits of a potential Anti-Doping Rule Violation (ADRV) or of the applicable or appropriate Consequences under the Code. However, given the complexity of dealing with cases where an Athlete or other Person provides Substantial Assistance, a specific section is included to address this issue.

These Guidelines are a model for best practice developed as part of the World Anti-Doping Program. They have been drafted to provide ADOs with Results Management responsibilities with a document detailing, in a step-by-step fashion, the phases of the Results Management process, hearing, and decision processes, and execution. These Guidelines build on existing anti-doping practices to promote harmonization in the administration of potential ADRVs.

Except where they incorporate provisions of the Code, ISRM and other Standards, these Guidelines are not mandatory¹; they are intended to provide clarity to ADOs regarding the most efficient, effective and responsible way of discharging their Results Management responsibilities².

Consequently, Signatories who have already created their own approaches to Results Management that have proven to be fair and effective and in compliance with the Code and applicable Standards may continue to follow their own processes.

As with all Guidelines under the Code, this document is subject to ongoing review and assessment to ensure it continues to reflect best practice moving forward. WADA encourages feedback on this document and recommends stakeholders consult WADA's website, <http://www.wada-ama.org> for the latest version.

As per Code Article 26.5, where the term "days" is used in the Code, an International Standard, or these guidelines, it shall mean calendar days unless otherwise specified.

- ❖ For deadlines³, the day of the act is not included (i.e. the date on which the decision is received). A deadline starts to run on the following day and expires on the last day of the period. If the end date is a Saturday, a Sunday or a legal holiday⁴, the period runs until the next day that is not a Saturday, a Sunday or a legal holiday;

¹ See, for instance, CAS 2018/A/5885 & 5936.

² In the event of any conflict between provisions of the Code or an International Standard and provisions of these Guidelines, provisions of the Code or of the applicable International Standard shall prevail.

³ As opposed to the day on which the period of Ineligibility starts to run, which is the day where the hearing decision providing for ineligibility or ineligibility is otherwise imposed (see Code Article 10.13), unless one of the exceptions described in Code Articles 10.13.1 and 10.13.2 applies.

⁴ In the jurisdiction where the person subject to the deadline is resident.

- ❖ For instance, if an Athlete received a decision on Thursday 10 December 2020, the 21-day deadline to appeal against this decision will start to run on Friday 11 December 2020 and expire on Friday 1 January 2021. However, as 1 January 2021 is a public holiday, 2 January 2021 a Saturday and 3 January 2021 a Sunday, the deadline to appeal will expire at midnight on Monday 4 January 2021.

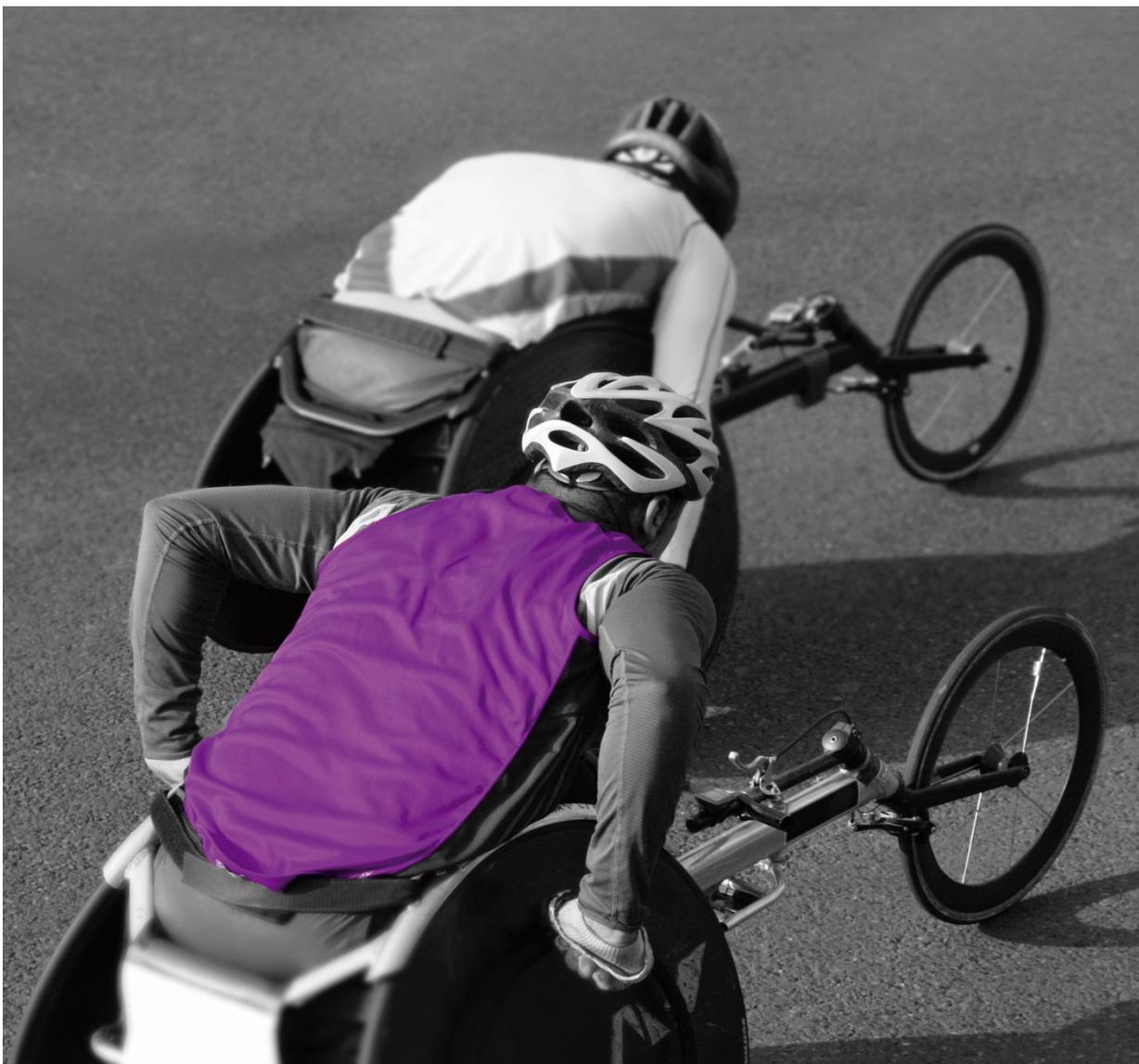
Remember that in addition to these Guidelines, you can find a suite of ISRM resources to help you achieve your goals on ADeL, including useful templates.



SECTION 1

Results management basics

This section includes Chapters 1 and 2. This section will provide support for Code Article 7.1 and ISRM Article 4 by helping you understand who is responsible for managing a potential doping case and under which legal framework as well as some basic key elements relating to results management.



CHAPTER 1:

Who is in charge of results management and how

RESULTS MANAGEMENT BASICS

SECTION 1

Who is in charge of results management and how

Initial considerations

PRE-HEARING PHASE

SECTION 2

How to review cases

How to impose provisional suspensions

What is in the charge letter

ADJUDICATION PROCESS

SECTION 3

How to enter into results management agreements

How to prepare for hearings

What to include in a decision

What to know about appeals

SECTION 4 SUBSTANTIAL ASSISTANCE

Overview

ADOs are required by Code Article 20 to vigorously pursue all potential ADRVs within their authority⁵.

When a case arises, the first issue to address is authority, i.e. which ADO has Results Management Authority (RMA) for a case.

Athletes, Athlete Support Personnel and other Persons must cooperate with ADOs investigating ADRVs⁶. This is particularly important in case of non-analytical ADRVs. Also, as contemplated in Code Article 3.2.5, the hearing panel may draw an inference adverse to the Athlete or other Person from the latter's lack of cooperation.

⁵ Code Articles 20.1.9, 20.2.10, 20.3.12, 20.4.13, 20.5.7 and 20.6.7.

⁶ Code Articles 21.1.6, 21.2.5 and 21.3.3.

WADA shall monitor compliance with the Code, i.e. whether ADOs conduct Results Management (including hearings) in a Code and ISRM-compliant manner. WADA shall ensure that the mandatory provisions of the Code and ISRM are duly implemented and respected, that cases are dealt with in a timely fashion to protect the rights of both the anti-doping community and Athletes or other Persons.

WADA has the right to appeal any decision if it believes that it is not compliant with the Code. This is essential in ensuring a harmonized application of the rules.

1. Responsible ADO

Analytical ADRVs

For Adverse Analytical Findings (AAFs), the RMA is the ADO that initiated and directed Sample collection, except in the following situations:

- ❖ Where an ADO with authority to test the Athlete conducted further analysis on a stored Sample with the permission of the ADO that initiated and directed Sample collection, the former will be responsible for any follow-up Results Management (Code Article 6.6);
- ❖ Where another ADO with authority to test the Athlete is directed by WADA to assume Results Management responsibility for a potential ADRV discovered following a seizure by WADA of a Sample or data (Code Article 6.8);
- ❖ Where Results Management shall be conducted by the applicable International Federation (IF) or by a third party with authority over the Athlete or other Person because domestic rules do not give a NADO authority over an Athlete or other Person or where the NADO declines to exercise such authority (Code Article 7.1.3);
- ❖ Where a Major Event Organization assumes only limited Results Management responsibility and the case is referred to the applicable IF (Code Article 7.1.4);
- ❖ Where WADA directs an ADO with Results Management authority to conduct Results Management in a particular case (Code Article 7.1.5).

Non-Analytical ADRV

If no Sample collection is involved, the RMA will be the ADO which first provides notice to an Athlete or other Person of a potential ADRV and then diligently pursues that ADRV.

Delegation of Results Management Responsibilities

As per the Introduction of the Code and Code Article 20, ADOs may delegate Results Management for which it is responsible to a Delegated Third Party but remains fully responsible for ensuring that any aspect of Results Management it delegates is performed in compliance with the Code. Further, the ADOs retain the title and responsibilities of a Results Management Authority.

- ❖ If a Delegated Third Party conducts Results Management in a manner non-compliant with the Code or ISRM, the ADO will be the organization subject to a potential compliance procedure under the ISCCS.

- ❖ If the Delegated Third Party is not a Signatory, the agreement with the Delegated Third Party shall require its compliance with the Code and International Standards. However, in case of non-compliance, the ADO will remain liable towards WADA.

2. Governing rules

The Results Management process will be governed by the RMA's anti-doping rules⁷.



GUIDANCE

- ❖ Although not specifically prohibited by the Code⁸, ADOs are strongly encouraged not to delegate Results Management of their cases to their Continental or National Federations given the importance of independence in this process and the required skills sets to handle Results Management.
- ❖ If delegation does occur, the delegating ADO:
 - Should pay particular attention to the requirement that the case must be heard by a fair, impartial and Operationally Independent hearing panel at first instance and that appeals are heard by a fair, impartial and Operationally and Institutionally Independent hearing panel;
 - Should use a specialized Delegated Third Party (e.g. the International Testing Agency – ITA) or another ADO;
 - Shall require the Delegated Third Party's compliance with the Code and International Standards in a signed written agreement.

Should provide in its anti-doping rules for a set of provisions intended to guarantee that its anti-doping regulations will always prevail over any other anti-doping regime⁹.

3. Clarification on specific authority issues

As a general rule, the default RMA is the Athlete's or other Person's IF (or a Delegated Third Party with authority over the Athlete or other Person as directed by the IF's rules) in cases where:

- A NADO's rules do not give it authority over an Athlete or other Person who is not a national, resident, license holder or member of a sport organization of that country, or

⁷ Or, where appropriate, by the rules of the Delegated Third Party.

⁸ See Code Introduction (page 18) and Article 20, which allow an ADO to delegate any aspect of Doping Control to a Delegated Third Party, whilst also specifying that the delegating ADO "shall remain fully responsible for ensuring that any delegated aspects are performed in compliance with the Code".

⁹ See CAS 2007/A/1370; CAS 2013/A/3241; CAS 2017/A/5144.

- ii) The NADO declines to exercise such authority.

The NADO should inform the IF of the referral of the case without delay and share the entire case file with the IF. The NADO should also inform WADA of the referral at the same time.

Moreover, as provided in Code Article 7.1.5, WADA may direct an ADO with Results Management authority to conduct Results Management in a particular case:

- ❖ For instance, where the ADO that discovered the potential ADRV declines to exercise its responsibility, does not have jurisdiction over the Athlete or other Person anymore, is compromised or potentially involved in the commission of one of the ADRV and/or a sport integrity violation other than doping.
- ❖ In such case, WADA will discuss the matter first with the potential ADO(s) and provide any assistance it may need.

3.1. Additional Testing

When a NADO conducts additional Testing pursuant to Code Article 5.2.6, it shall be considered as the RMA (Code Article 7.1.2).

However, if the NADO only directs the Laboratory to perform additional types of analysis at the NADO's expense, the IF or the MEO retains Results Management authority.

3.2. WADA-conducted Testing

If a test or Further Analysis is conducted by WADA on its own initiative as per Code Articles 5.2.4 or 6.8, or an ADRV is discovered by WADA, WADA will designate an ADO with authority over the Athlete or other Person as the RMA.

REMINDER

The NADO must provide the applicable IF or MEO with any assistance they may require in the implementation of any subsequent Results Management procedure (e.g. contact details of the Athlete, collection and translation of documents).

3.3. Major Events

For AAFs arising from MEO tests or other ADRVs that occur at MEO Events, the MEO for the Event shall assume Results Management responsibility to at least¹⁰ the limited extent of conducting a hearing to determine the following matters:

- i) Whether an ADRV was committed;

¹⁰ See Code Article 7.1.4 and ISRM Article 9.1.2.

- ii) If so, the applicable Disqualifications under Code Articles 9 and 10.1, any forfeiture of any medals, points or prizes from that Event, and any recovery of costs applicable to the ADRV.

If the MEO only assumes limited Results Management responsibility, it shall promptly refer the case to the applicable IF for completion of Results Management and provide any reasonable assistance the latter may require. The MEO should also invite the applicable IF to attend the hearing as an observer and should keep the IF abreast of the progress of the case under the MEO's Results Management responsibility.

3.4. Whereabouts Failures (Filing Failures or Missed Tests)

The RMA in relation to potential Whereabouts Failure (Missed Test or Filing Failure) will be the IF or the NADO with whom the Athlete files his or her whereabouts information. The IF and NADO should clearly indicate in ADAMS that the Athlete is included in its respective Registered Testing Pool and should make sure the information is updated and accurate at all times. The identity of the whereabouts custodian shall be clearly reported in ADAMS as well.

It is important (and required as per Code Article 7.1.6) that the ADO records and submits a Whereabouts Failure into the Anti-Doping Administration and Management System (ADAMS) so that it is available to WADA and other relevant ADOs.



GUIDANCE

Any Whereabouts Failure found either (i) by an ADO that previously received the Athlete's Whereabouts Filing (see ISRM Article B.3.1) or (ii) by an ADO with Testing Authority with whom the Athlete does not file his or her whereabouts information (see ISRM Article B.3.2), shall be promptly referred to the RMA, and may be taken into account for a potential Code violation of Article 2.4.

Any Delegated Third Party and/or ADO involved in the uncovering of a potential Whereabouts Failure shall assist the RMA as necessary by providing the relevant information to the RMA at the earliest convenience with a view of complying with the time frame of ISRM Article B.3.2(d).

3.5. Results Management for Athlete Biological Passport cases

The pre-adjudication phase of Results Management for Atypical Passport Findings (ATPFs) or Adverse Passport Findings (APFs) shall be administered and managed by an Athlete Passport Management Unit

(APMU) on behalf of the Passport Custodian, regardless of whether another ADO was the Testing Authority of the test(s) that ultimately prompted the ATPF or APF.

If the APMU declares an APF in ADAMS, the Passport Custodian shall notify the Athlete in accordance with ISRM Article 5.3.2 and C.5.2.

However, and in any event, the Passport Custodian shall always inform any Anti-Doping Organization with a right of appeal under Code Article 13.2.3 of a decision not to move forward with a matter, as required by ISRM Article 5.4. Such notification shall include reasons. If the Athlete has already been notified of ongoing Results Management, they shall also be notified by the Passport Custodian of a decision not to move forward with a matter.

In circumstances where an Athlete is tested by two or more ADOs in the context of the ABP, it is important that all ABP tests recorded by one ADO be visible/accessible to the other(s) via ADAMS to allow an overview of the Athlete's Passport.

3.6. Retired Athlete¹¹

In accordance with Code Article 7.7, an ADO has or retains authority to either conduct or complete Results Management in the two following situations:

- i) When an Athlete or other Person retires before any Results Management process has begun. In such case, the RMA is the ADO that would have had authority at the time the ADRV was committed.
- ii) When an Athlete or other Person retires while Results Management is underway.



GUIDANCE

In both situations, RMAs are strongly encouraged to conduct and/or complete Results Management whenever it is possible in order to ensure that the Athlete or other Person does not retire (with a view to resuming competition at a later stage) in the erroneous belief that it will avoid the prosecution of his/her case and/or the imposition of a sanction.

¹¹ RMAs should require retiring Athletes to complete, sign and return a form informing them of their duties under Code Article 5.6.1 relating to International- or National-Level Athletes who were in a Registered Testing Pool at the time of their retirement and then wish to return to active participation in sport (i.e. to make themselves available for Testing by giving 6 months prior written notice, providing that an exemption to this rule may be granted for fairness reasons by WADA, in consultation with the relevant International Federation and NADO).

4. Disputes

If more than one ADO claims to have authority over a case, and discussion in good faith fails, WADA settles the dispute and decides which ADO manages the Results Management process.

WADA's decision may be appealed to the Court of Arbitration for Sport (CAS) within seven days from its notification (Code Article 7.1.1).

Further, as indicated in Code Article 7.1.1, any ADO seeking to conduct Results Management outside of the authority provided in Code Article 7.1 may seek WADA's approval to do so.



GUIDANCE

To enable WADA to conduct its analysis and make its decision, the requesting ADO is required to provide:

- ◆ Its reasoned submission with all supporting evidence;
- ◆ The refusing ADO's position, including reasons for refusal and supporting evidence if applicable.

The request must be sent by email:

- ◆ At the following address: rm@wada-ama.org
- ◆ With the refusing ADO in copy.

If need be, WADA may require further information/documents from the relevant ADOs in order to make its decision.

5. Results Management as directed by WADA

In accordance with Code Article 7.1.5, WADA may direct an ADO with RMA to conduct Results Management in a particular case.

Any refusal to do so within a reasonable deadline set by WADA shall be considered an act of non-compliance, in which case WADA may direct another ADO with authority over the Athlete or other Person that is willing to do so, or any other willing ADO, to take Results Management authority in place of the refusing ADO.

The refusing ADO shall be liable to reimburse the costs and attorney's fees of conducting Results Management to the ADO designated by WADA; any failure to do so shall also be considered an act of non-compliance.

CHAPTER 2:

Initial Considerations

RESULTS MANAGEMENT BASICS

SECTION 1

Who is in charge of results management and how

Initial considerations

PRE-HEARING PHASE

SECTION 2

How to review cases

How to impose provisional suspensions

What is in the charge letter

ADJUDICATION PROCESS

SECTION 3

How to enter into results management agreements

How to prepare for hearings

What to include in a decision

What to know about appeals

SECTION 4 SUBSTANTIAL ASSISTANCE

1. Ensuring confidentiality

All Results Management processes and procedures are confidential. They should only be disclosed in the limited circumstances provided for in Code Article 14 and in the ISRM¹².



GUIDANCE

RMAAs are also reminded that information relating to Results Management shall only be shared, internally or externally:

- ◆ With individuals with a need-to-know¹³, who should only be provided with the minimum information they need; and
- ◆ Using an encrypted and secure system (e.g. a Sharefile-type sharing platform set up by the ADO, encrypted emails, password-protected documents, ADAMS)¹⁴.

¹² See, in particular, ISRM Articles 4.1 and 5.2.2(b).

¹³ Code Article 14.1.5.

¹⁴ For further guidance, please refer to the ISPPPI, in particular its Article 9.

2. Ensuring timeliness

In the interest of fair and effective sport justice, any asserted ADRV should be prosecuted in a timely manner.

Irrespective of the type of ADRV involved, and save for cases involving complex issues or delays beyond the control of the ADO (e.g., delays attributable to the Athlete or other Person), ADOs should be able to conclude Results Management, including the hearing process at first instance, within a maximum of six months of notification of the asserted ADRV.¹⁵



GUIDANCE

It is recommended that RMAs keep WADA informed each time they are facing a situation where the above-mentioned deadline cannot be respected, by sending an explanatory email to rm@wada-ama.org.

If an ADO fails to render a decision within a reasonable deadline set by WADA, WADA may elect to bring the case directly before the CAS. The CAS may decide that the costs of the proceedings and WADA's attorney fees shall be paid by the RMA (Code Article 13.3).

3. Applying the statute of limitations

No ADRV proceedings can commence against an Athlete or other Person unless they were notified, or notification has been reasonably attempted, within 10 years from the date the ADRV is asserted to have occurred (Code Article 17).

If there is any doubt that the violation was committed within the 10-year period, the RMA should take reasonable steps to determine that the ADRV does fall within the limitation period before taking action.

¹⁵ As indicated in the comment to ISRM Article 4.2, while the six months' period is a guideline, it may lead to compliance consequences for the RMA in cases of severe and/or repeated failure(s).



GUIDANCE

RMA's must collect all necessary information and documentation relating to a potential ADRV at the soonest time possible, including by requesting the assistance of any other ADO or Delegated Third Party;

These steps should be documented and made in writing, copying WADA if need be (rm@wada-ama.org).

SECTION 2

Pre-hearing phase

This section includes Chapters 3 to 5. This section will provide support for Code Article 7 and ISRM Articles 5 to 7 by helping you understand the first results management phase, provisional suspensions and what is in the notice of charge.



CHAPTER 3

How to review cases

RESULTS MANAGEMENT BASICS

SECTION 1

Who is in charge of results management and how

Initial considerations

PRE-HEARING PHASE

SECTION 2

How to review cases

How to impose provisional suspensions

What is in the charge letter

ADJUDICATION PROCESS

SECTION 3

How to enter into results management agreements

How to prepare for hearings

What to include in a decision

What to know about appeals

SECTION 4 SUBSTANTIAL ASSISTANCE

1. Reviewing Adverse Analytical Findings (AAFs)

[Annex C](#) provides a flow chart of the associated Results Management AAF process.

1.1. Reporting of “A” Sample results by the Laboratory

All AAFs should be reported by the Laboratory via ADAMS within twenty days of receipt of the Sample.¹⁶

The Laboratory’s Test Report must indicate the Sample code, the type of test (In-Competition or Out-of-Competition), the sport, the date of the Sample Collection Session, the test results, the specific gravity of the Sample, and all other information set out in the ISL.¹⁷

¹⁶ ISL Article 5.3.8.4.

¹⁷ Ibid.



GUIDANCE

The ADO should ensure that its ADAMS account is properly configured to receive AAF notifications.

For further assistance regarding the use of ADAMS, requests may be sent to the following email address: adams@wada-ama.org.

The Laboratory must record and report any irregularity observed at the time of the Sample's receipt that may adversely affect the Sample's integrity for analytical Testing¹⁸, e.g., Sample transport conditions, evident Tampering or adulteration of the Sample, the Sample is not sealed with a tamper-evident device or is unsealed upon receipt, or unusual Sample conditions (odor, color).

The Laboratory then notifies the Testing Authority and seeks instructions regarding rejection or Testing of Samples for which irregularities are noted. The Testing Authority shall inform the Laboratory in writing within seven (7) days whether the irregular Sample should be reanalyzed or not and/or any further measures should be taken¹⁹. If the Testing Authority decides not to proceed with the case, the Sample rejection is documented²⁰.

REMINDER

- ◆ As per Code Article 7.5.1 and ISRM Article 5.4, a reasoned decision must be issued and notified to parties indicated in Code Article 14.1.2 (to which Code Article 14.1.4 refers).
- ◆ In order to fulfil their obligation to notify WADA, RMAs shall, at a minimum, promptly report their reasoned decisions into ADAMS.²¹

¹⁸ ISL Article 5.3.3.1.

¹⁹ ISL Article 5.3.3.

²⁰ Ibid.

²¹ In addition to the mandatory upload of the decision into ADAMS, the RMA may also inform WADA by sending an email to the following address: rm@wada-ama.org. For further information relating to notification of a decision not to bring a case forward, see mutatis mutandis Section 1.3 below.

1.2. Initial review

Upon receipt of an AAF, the RMA promptly conducts an initial review in accordance with ISRM Article 5.1.1 before notifying the Athlete.



GUIDANCE

RMA's are expected to conduct such review in a timely manner upon receipt of the analytical report from the Laboratory.

1.2.1. Therapeutic Use Exemption (TUE)

The RMA shall verify whether the Athlete possesses a TUE for the Prohibited Substance that was detected in their Sample. Given that the entry of TUEs in ADAMS is mandatory for all ADOs²², this can be done by consulting the Athlete's records in ADAMS, although the RMA may also wish to contact another ADO that might have approved a TUE for the Athlete (e.g., the NADO, the International Federation or the Major Event Organization)²³.



GUIDANCE

- ❖ Such correspondence should be done in writing. In the event the consulted ADO is late in responding, the requesting ADO should send a reminder copying the WADA Results Management email address (rm@wada-ama.org).
- ❖ When handling a case that involves a foreign Athlete, the RMA should contact the NADO (or equivalent body) in the Athlete's home country and/or the applicable International Federation.
- ❖ Depending on the Athlete's level (International/National/other), there may be restrictions on granting a retroactive TUE²⁴. However, whenever this is possible, the Athlete should be offered the possibility to establish that the AAF resulted from a legitimate Therapeutic Use of the Prohibited Substance and to apply for a retroactive TUE.

²² See ISTUE Article 5.5

²³ See ISRM Article 5.1.1.1.

²⁴ See the Code definition of Athlete, Code Article 4.4.5, and the ISTUE. The decision on a retroactive TUE may be taken by the Therapeutic Use Exemption Committee (TUEC) in accordance with the rules of the ADO with jurisdiction over the Athlete.

If an applicable TUE exists on the Athlete's record, a further check should be done to ensure that the Athlete has complied with any relevant requirements of their TUE.



GUIDANCE

RMA's are invited to conduct the following investigative steps (hereafter "Investigative Steps"):

- ❖ To collect all relevant documentation and information (e.g. Doping Control Form (DCF), medical certificate, prescription);
- ❖ To request in writing from the applicable Laboratory an indication of the estimated concentration(s) when possible²⁵;
- ❖ To consult an expert – in-house or external – to determine whether the AAF is compatible with the route of administration and allowed dosage as indicated in the TUE. As per ISL Article 5.4.5, RMA's may consult the applicable Laboratory Director to obtain advice and/or opinion regarding the analytical findings.

If it appears that the TUE is valid and any terms have been complied with, the RMA will notify relevant parties that no further action will follow.²⁶



GUIDANCE

As per Code Article 7.5.1 and ISRM Article 5.4, a reasoned decision must be issued and notified to the parties indicated in Code Article 14.1.2 (to which Code Article 14.1.4 refers).

In order to fulfil their obligation to notify WADA, RMA's shall, at a minimum, promptly report their reasoned decisions into ADAMS:

- ❖ The uploading or validation of a TUE in ADAMS – which is a document supporting the RMA's decision – is not sufficient to meet the RMA's obligations under ISRM Article 5.4. This also applies to cases with a retroactive TUE.
- ❖ WADA must receive a reasoned decision in respect of each AAF in order to consider the matter as finalized and closed.
- ❖ It is also recommended that the documents supporting the decision be attached to the notification of the decision.

²⁵ See ISL Articles 5.3.6.2.2 and 5.3.8.4.

²⁶ Code Articles 7.5.1 and 14.1.2 (to which Code Article 14.1.4 refers).

1.2.2. Glucocorticoids, beta-2 agonists, diuretics and masking agents, and other particular cases

Glucocorticoids

Glucocorticoids²⁷ are prohibited when administered by intravenous, intramuscular, oral or rectal routes. Other routes of administration are not prohibited when used within the manufacturer's licensed doses and therapeutic indications.²⁸

When there is a Presumptive AAF for a glucocorticoid, although not required, the RMA may be contacted by the Laboratory to enquire whether a TUE exists for the Prohibited Substance detected²⁹.



GUIDANCE

Whether the analytical result is reported as a Presumptive AAF³⁰ or an AAF, RMAs should verify:

- ◆ The route of administration used as part of its initial review before charging the Athlete with an ADRV;
- ◆ Any relevant documentation³¹ to determine whether the Prohibited Substance appears to have been administered through a permitted route;
- ◆ With an expert, whether the analytical finding is compatible with an apparent authorized route of ingestion³².

RMAs should promptly instruct the applicable Laboratory to retain the Athlete's Samples as indicated in Article 3.4.2.1 above, and must follow the notification steps described in this article.

Beta-2 Agonists

Beta-2 Agonists are prohibited except salbutamol, formoterol, salmeterol and vilanterol when taken by inhalation in accordance with the dosages and time periods indicated in the Prohibited List³³.

The Presence of salbutamol or formoterol in urine exceeding the limit indicated in the Prohibited List, is presumed not to be an intended Therapeutic Use, and shall be considered as an AAF – unless the

²⁷ Under the 2021 Prohibited List Section S9.

²⁸ For example, topical administration: inhaled, intranasal, ophthalmological, perianal and dermal.

²⁹ ISL Article 5.3.6.2.2. See also Guidelines – TUE Enquiries by Accredited Laboratories: https://www.wada-ama.org/sites/default/files/resources/files/guidelines_for_tue_enquiries.pdf.

³⁰ It is recommended to conduct these verifications regardless of the substance that is the subject of the Presumptive AAF.

³¹ For instance, information appearing on the DCF, documents the Athlete may have handed over to the DCO and/or sent to the ADO on his/her own initiative before or just after the sample collection – prescription, medical certificate, proof of purchase in the event the medication is available over the counter, etc. Pursuant to ISRM Article 5.1.1.3, ADOs are not expected to contact Athletes at this stage, but the latter could explain that the finding came from an authorized route of administration upon receipt of the notification letter under ISRM Article 5.1.2.

³² For further guidance, see mutatis mutandis investigative steps described in Section 1.2.1 above.

³³ Prohibited List Section S3.

Athlete proves, through a controlled pharmacokinetic study, that the abnormal result was the outcome of Therapeutic Use by inhalation up to the maximum dose indicated in the Prohibited List³⁴.



GUIDANCE

Key guiding principles for a controlled pharmacokinetic study as referred to in the Prohibited List are described in [Annex 2 of the TUE Physician Guidelines](#).

For these substances, some Laboratories report a Presumptive AAF to the RMA and inquire if an approved TUE exists for the Prohibited Substance(s) detected.

Diuretics and Masking Agents

Diuretics and Masking Agents are prohibited except³⁵:

- i) Drospirenone; pamabrom; and topical ophthalmic use of carbonic anhydrase inhibitors (e.g. dorzolamide, brinzolamide), and
- ii) Local administration of felypressin in dental anaesthesia.



GUIDANCE

Investigative steps, instructions to Laboratories and notification requirements described under the “Glucocorticoids” Section above should be followed mutatis mutandis.

Particular Cases

In some cases, the AAF may be the result of the consumption by the Athlete of a non-prohibited substance which may be metabolized into a prohibited substance.

For instance, the presence of morphine³⁶ in an Athlete’s sample may result from the administration of the permitted substance such as codeine³⁷.

³⁴ See ISRM Article 5.1.2.2(a) and Prohibited List Section S3.

³⁵ Prohibited List Section S5.

³⁶ Prohibited List Section S7.

³⁷ See [TD2019DL](#), Section 2.0 (f).



GUIDANCE

Investigative steps, instructions to Laboratories and notification requirements described under the “Glucocorticoids” Section above should be followed *mutatis mutandis*.

1.2.3. Apparent departure from the ISTI, ISL and/or ISRM and related notification

The RMA must review if any apparent departure(s) from the ISTI, the ISL and/or any other International Standard (in particular the ISRM)³⁸ could reasonably have caused the AAF:

- ❖ Departures from the ISTI:
 - The RMA must review relevant documentation to ensure that there have not been any apparent departures from the ISTI that could reasonably have caused the AAF or otherwise put its validity into serious question.
 - Particular attention must be paid to the Doping Control form and any supplemental reports and Testing documents (e.g. check the identity, integrity and security of Samples if collected).
 - Examples of apparent departures that might require further investigation include³⁹:
 - ❖ Failure to properly notify the Athlete of his/her duty to submit to Sample collection;
 - ❖ The absence of any signature by the Athlete or an Athlete representative on the Doping Control form;
 - ❖ Indication in the documentation that a partial Sample appeared to have been left unsupervised and unsealed.

³⁸ Within the limits described in Code Articles 3.2.2 (departure from the ISL) and 3.2.3 (departures from the ISTI and the ISRM).

³⁹ CAS 2014/A/3487; CAS 2018/A/5990; CAS 2019/A/6155.

- ❖ Departures from the ISL:
 - WADA–accredited Laboratories are presumed to have conducted the Sample analysis and custodial procedure in accordance with the ISL⁴⁰.
 - Nevertheless, the RMA should review the Test Report, any other information available, and the context of the result to identify if a serious, obvious departure from the ISL could have resulted in the AAF.
 - If the RMA considers it necessary, an ISL review can also include a review of the Laboratory Documentation Package (if available at that stage) the Laboratory prepares to support the AAF.
- ❖ As per ISRM Article 1, notwithstanding the mandatory nature of the ISRM, departures from this International Standard:
 - “shall not invalidate analytical results or other evidence of an anti-doping rule violation”; and
 - “shall not constitute a defense to an anti-doping rule violation, except as expressly provided for under Code Article 3.2.3”, i.e. when the departure from the ISRM:
 - ❖ Is related to either (i) an Adverse Passport Finding, (ii) the requirement to provide notice to the Athlete of the “B” Sample opening or (iii) to Athlete notification of a whereabouts failure, and
 - ❖ Could reasonably have caused the related anti-doping rule violation.

The burden of proof lays on the Athlete or the other Person, who must establish by a balance of probability⁴¹ all of the following elements:

- ❖ There was a departure from a mandatory requirement (i.e. “shall” or “must”) – not from a best practice (i.e. “should”, “may” or “recommend”)⁴² – of one of the specific International Standard provisions;
- ❖ There was a causative link, i.e. such departure “could reasonably have caused” the ADRV for which the Athlete or other Person has been charged with⁴³. When required, the proof of a causative link:

⁴⁰ Code Article 3.2.2

⁴¹ Code Article 3.1. See also, CAS 2011/A/2566; CAS 2012/A/2719.

⁴² CAS 2017/A/5112; CAS 2018/A/5585 & 5936; CAS 2019/A/6148.

⁴³ CAS 2011/A/2566; CAS 2012/A/2779.

- Must be more than hypothetical but need not be likely, only plausible and not that it caused the ADRV⁴⁴;
 - Can be established to the “somewhat lower standard of proof” than the balance of probability (i.e. “could reasonably have caused”)⁴⁵.
- ❖ The departure was not caused by the Athlete’s or other Person’s own actions⁴⁶.

If the Athlete or other Person establishes that a departure occurred in the above-mentioned conditions, the burden shifts to the RMA to prove to the comfortable satisfaction of a hearing body that the departure did not cause the ADRV⁴⁷.

1.3. Notification if the case is not brought forward after initial review

The RMA will not bring the case forward as an AAF in the following situations:

1. There is a valid TUE in place (or a retroactive TUE was granted) for the Prohibited Substance detected that is consistent with the Use and dosage;
2. The positive finding involves a Prohibited Substance subject to a permitted route or results from the consumption by the Athlete of a non-prohibited substance;
3. There is a departure from an IS that could reasonably have caused the AAF. In such case, the RMA should consider conducting additional Testing on the Athlete in a timely manner, using any information and/or intelligence available (e.g. Athlete’s whereabouts, social networks, newspapers).

If the RMA decides not to bring the case forward after the initial review, it must complete the following steps:

- ❖ Issuance of a reasoned decision⁴⁸;
- ❖ Their NADO, the responsible IF and WADA without delay⁴⁹, by using an encrypted and secure system (e.g. a Sharefile-type sharing platform set up by the ADO, encrypted emails, password-protected documents, ADAMS)⁵⁰;
- ❖ Promptly report its reasoned decision into ADAMS⁵¹.

⁴⁴ CAS 2014/A/3487; CAS 2017/A/5112.

⁴⁵ See Comment to Code Article 3.2.2.

⁴⁶ CAS 2011/A/2376; CAS 2019/A/6112.

⁴⁷ Code Article 3.1, 3.2.2 and 3.2.3.

⁴⁸ Given this decision may be appealed (Code Article 13.2), the notification shall contain reasons stating why the case will not proceed.

⁴⁹ Code Articles 7.5.1, 14.1.2 and 14.1.4 and ISRM Article 5.4.

⁵⁰ See Section 3.1 above.

⁵¹ In addition to the mandatory upload of the decision into ADAMS, the RMA may also inform WADA by sending an email to the following address: rm@wada-ama.org.

1.4. Athlete notification if the case is brought forward after the initial review

If no apparent departure from the ISL or ISTI that could have caused the AAF is identified during the initial review and there is no applicable TUE or entitlement to a TUE for the Prohibited Substance(s) detected, and if it is apparent that the AAF was not caused by the ingestion of the Prohibited Substance(s) through an authorized route, the RMA must promptly notify the Athlete in accordance with ISRM Article 5.1.2.



GUIDANCE

RMAs are strongly encouraged to send all notifications directly to Athletes. In the event the RMA elects to notify an Athlete via a third party not chosen by the Athlete (for instance, his or her National Federation), it should ensure that the Athlete receives such communication by asking the third party to confirm the fact that such notification was actually delivered to the Athlete⁵².

The RMA should consider adopting and implementing the following steps in its anti-doping regulations when using emails as a method of notification:

- ❖ Collecting an actual email address for each person falling under its jurisdiction (e.g. license, Competition's entry form, Doping Control Form⁵³);
- ❖ Where there are multiple addresses for an athlete, using all of them, in particular the most recent one that the athlete corresponded from and the one registered in ADAMS or any other official database;
- ❖ For data privacy purposes, sending all notifications via an encrypted system, such as Sharefile, ideally which allows to indicate whether the recipients have downloaded the information.

Simultaneously, the RMA should have a policy in place to promptly instruct the Laboratory in writing:

- ❖ To retain the Athlete's Samples in order to allow the analysis of the "B" Sample in the event the Athlete would be notified of the commission of a possible ADRV at a later stage⁵⁴;
- ❖ To not conduct any repeat or additional analysis unless instructed to by the RMA (if received consent from the Athlete or approval from the hearing body of that case) or WADA.

⁵² CAS 2011/A/2499.

⁵³ Sample Collection Personnel should be made aware of the importance of the notification requirements and pay attention to information related to the Athlete's contact details when Doping Control Forms are completed.

⁵⁴ In accordance with ISL Articles 5.3.11.1 and 5.3.11.2, Sample(s) with an Adverse Analytical Finding or Atypical Finding will be retained by Laboratories for a minimum of six (6) months after reporting the final analytical result (for the "A" or the "B" Sample, as applicable) in ADAMS. Beyond this six-month deadline, Laboratories may dispose of Samples.

- ❖ To notify the relevant Laboratory that the Results Management relating to a specific Sample is complete and it no longer requires the storage of this Sample⁵⁵.

⁵⁵ See also ISRM Article 9.2.5 where the RMA shall give a similar instruction to the relevant Laboratory once the deadline to appeal a decision has elapsed and no appeal has been filed against that decision.

Notifications shall include the following:

- ❖ The Athlete's name, country, sport and discipline within the sport, whether the test was In-Competition or Out-of-Competition, the date of Sample collection (if applicable);
- ❖ The AAF⁵⁶;
- ❖ The fact that the AAF may result in a Code Article 2.1 and/or 2.2 ADRV and the applicable Consequences⁵⁷;



GUIDANCE

RMA should always refer to both Code Articles 2.1 and 2.2 in the notification and charge letter to an Athlete if the matter relates to an AAF.

Several considerations will apply in the indication of Consequences. In most cases, the RMA should stipulate the Consequences based on the sanctions explained in Code Article 10. This means that for Presence cases, the stipulated Consequences will typically be either a 2-year or 4-year period of Ineligibility. In this regard, any investigation undertaken by the RMA may be relevant (e.g. the use of a Specified Substance Out-of-Competition carries a presumption that the ADRV was not "intentional").

The Athlete should be advised of the potential for sanction reduction based on Code Article 10. If the ADRV is a second violation, the RMA should specify a sanction based on Code Article 10.9.1.

- ❖ The Athlete's right to request the analysis of the "B" Sample or, failing such request, that the "B" Sample analysis may be irrevocably waived⁵⁸;
- ❖ The opportunity for the Athlete and/or the Athlete's representative⁵⁹ to attend the "B" Sample opening and analysis;

⁵⁶ In the event that the AAF relates to salbutamol, formoterol, human chorionic gonadotrophin or another Prohibited Substance subject to specific Results Management requirements in a Technical Document, the RMA shall in addition comply with ISRM Article 5.1.2.2. The Athlete shall be provided with any relevant documentation, including a copy of the Doping Control form and the Laboratory results.

⁵⁷ As per ISRM Comment to Article 5.1.2.1(b), prior to notifying the Athlete or other Person of the asserted ADRV, the RMA must determine if a prior ADRV exists (for further details on this point, see Section 3.8.3 below).

⁵⁸ The RMA may still request the "B" Sample analysis even if the Athlete does not request the "B" Sample analysis or expressly or impliedly waives their right to analysis of the "B" Sample. The RMA may provide in its anti-doping rules that the costs of the "B" Sample analysis shall be covered by the Athlete.

⁵⁹ As indicated in ISL Article 5.3.6.2.3, the Athlete may have a maximum of two representatives in attendance for the "B" Sample opening, aliquoting and resealing procedures. The Athlete and one representative may also have a reasonable opportunity to observe

**GUIDANCE**

The name of the Athlete's representative should be requested by the RMA and communicated to the Laboratory.

- ❖ The scheduled date, time and place for the "B" Sample" analysis should the Athlete or RMA choose to request an analysis of the "B" Sample (alternatively, this information may be provided in a subsequent letter promptly after the Athlete or the RMA has requested the "B" Sample analysis);

**GUIDANCE**

RMA's may also consider clarifying, in their notification letter, that the time limit for the Athlete to request the analysis of the "B" Sample cannot be delayed by the Athlete's having first obtained the Laboratory Documentation Package relating to the analysis of the "A" Sample.

- ❖ The Athlete's right to request copies of the "A" Sample Laboratory Documentation Package;

**GUIDANCE**

Such requests must be made to the RMA, not the Laboratory directly.

As per the Comment to ISRM Article 5.1.2.1(c), the RMA "may provide in its anti-doping rules that the costs of the "B" Sample analysis shall be covered by the Athlete."

The opportunity for the Athlete to provide an explanation within a short deadline;

- ❖ The opportunity for the Athlete to:

other steps of the "B" Confirmation Procedure, as long as their presence in the Laboratory does not interfere with the Laboratory's routine operations or the Laboratory's safety or security requirements. If applicable, a translator may also be present. A representative of the Testing Authority or RMA and a representative of the National Olympic Committee and/or National Sport Federation and/or IF may also attend the "B" Sample opening procedure, upon request and with the prior approval of the Laboratory Director.

- provide Substantial Assistance as set out under Code Article 10.7.1;
 - to admit the anti-doping rule violation and potentially benefit from a one-year reduction in the period of Ineligibility under Code Article 10.8.1 (if applicable);
 - or to seek to enter into a case resolution agreement under Code Article 10.8.2; and
- ❖ Any matters relating to Provisional Suspension (including the possibility for the Athlete to accept a voluntary Provisional Suspension) in accordance with ISRM Article 6 (if applicable).



GUIDANCE

In addition to the requirements set forth above, the notification should also include that:

- ❖ The Athlete's NADO/IF and WADA will also receive a copy of the notification in order to process the information for purposes of anti-doping and results management of the AAF;
- ❖ The Athlete's NADO/IF and WADA may all request copies of the Athlete's case file after receipt of a decision as per Code Article 14.2.2.

The Athlete's NADO, the relevant IF and WADA shall be notified simultaneously by the RMA and any communication shall be promptly recorded in ADAMS (Code Article 14.1.2 and ISRM Article 5.1.2.8).⁶⁰

Notification Requirements Involving Certain Prohibited Substances

In addition to the notification requirements indicated immediately above, the RMA must notify the Athlete of the following if the AAF relates to any of the Prohibited Substances indicated below:

- ❖ Salbutamol or Formoterol: that the Athlete can prove, through a controlled pharmacokinetic study, that the AAF was the consequence of a Therapeutic dose by inhalation up to the maximum dose indicated under class S3 of the Prohibited List.⁶¹ The Athlete shall be granted a deadline of seven (7) days to indicate whether they intend to undertake a controlled pharmacokinetic study, failing which the RMA may proceed with the Results Management.
- ❖ Urinary human chorionic gonadotrophin: that the procedures set out at Article 6 of the TD2019CG/LH or any subsequent version of the Technical Document will be followed; or

⁶⁰ In addition to the mandatory upload of the decision into ADAMS, the RMA may also inform WADA by sending an email to the following address: rm@wada-ama.org

⁶¹ The Athlete's attention shall also be drawn to the key guiding principles for a controlled pharmacokinetic study and they shall be provided with a list of Laboratories that are able to perform the controlled pharmacokinetic study.

- ❖ For other Prohibited Substance(s) subject to specific Results Management requirements: that it will follow the procedures set out in a Technical Document or other document issued by WADA.

1.5. “B” Sample Analysis

1.5.1. Who can request the “B” Sample analysis?

Both the Athlete and the RMA have the possibility to request the “B” Sample analysis. Indeed, if the Athlete does not request the “B” Sample analysis or expressly or implicitly waives his/her right to have the “B” Sample analysis, the RMA may still request the analysis.

The Athlete must be clearly informed that if they fail to file such request within the stipulated time frames, the right to a “B” Sample analysis is deemed to be irrevocably waived. It is advisable to always seek a clear, expressly written confirmation or waiver directly from the Athlete as to their intention regarding the “B” Sample analysis and not to leave this issue unclear or uncertain.

It is the responsibility of the Testing Authority and/or RMA (as applicable) to inform the Laboratory, in writing, whether the Athlete has requested or expressly or implicitly waived his/her right to the “B” Sample analysis within fifteen (15) days of the Laboratory reporting an AAF.⁶²

In the event that the Athlete does not request the “B” Sample analysis or expressly or implicitly waives his/her right to the analysis of the “B” Sample, the Testing Authority and/or RMA should inform the Laboratory, in writing, and, again, within fifteen (15) days of the Laboratory reporting the AAF whether the “B” Confirmation Procedure shall still be performed.⁶³

REMINDER

The Testing Authority or RMA (as applicable) shall provide the Laboratory with this information within the minimum Sample storage time requirements indicated in Articles 5.3.11.1 and 5.3.11.2 of the ISL.

1.5.2. Where is the “B” Sample analysis performed?

The “B” Sample analysis is performed in the same Laboratory as the “A” Sample.⁶⁴

If part of the analysis was subcontracted to another Laboratory (e.g. specialized on Boldenone), the “B” Sample analysis should be carried out in the subcontracted Laboratory.

⁶² ISL Article 5.3.6.2.3.

⁶³ Ibid.

⁶⁴ ISL Article 5.3.6.2.3. The only exception to this rule, as indicated therein, is if there are exceptional circumstances, as determined by WADA and with WADA’s prior written approval, which prevent the “B” Confirmation Procedure from being performed in the same Laboratory.

1.5.3. Timing and right to attend the “B” Sample opening and analysis

Time and right to attend the “B” Sample Confirmation procedure

If the “B” Sample analysis is requested by the Athlete or the RMA, the Athlete shall be informed of his/her right to attend the “B” Sample opening and analysis and to be represented during this process.⁶⁵

Once the scheduled date, time and place for the “B” Sample analysis are confirmed with the Laboratory, the Athlete should be notified immediately⁶⁶.



GUIDANCE

This information shall be notified to the Athlete and be documented by the RMA.

If the Athlete requests the “B” Sample analysis but claims that they and/or their representative(s) is (are) not available on the scheduled date indicated by the RMA, the RMA shall liaise with the Laboratory and propose at least two alternative dates.⁶⁷

If the Athlete and their representative claim not to be available on the alternative dates proposed, the RMA shall instruct the Laboratory to proceed regardless and appoint an Independent Witness⁶⁸ to verify that the “B” Sample container shows no signs of Tampering and that the identifying numbers match that on the Sample collection documentation.



GUIDANCE

- ◆ As per the ISL definition, an Independent Witness “shall not be an employee or have a personal financial relationship with the Athlete or his/her representative(s), the Laboratory, the Sample Collection Authority, the Testing Authority / Delegated Third Parties / Results Management Authority or WADA, as applicable”. Therefore, notwithstanding his/her integrity, the Independent Witness appointed cannot be connected to the RMA in any fashion (e.g. being a staff or member of the ADO or one of its commissions without being involved with Results Management matters) in order to avoid his/her independence to be tainted⁶⁹;

⁶⁵ ISRM Article 5.1.2.3.

⁶⁶ Time and date for the “B” Sample analysis may also be set up in the notification letter.

⁶⁷ The alternative dates should take into account: (1) the reasons for the Athlete’s unavailability; and (2) the need to avoid any degradation of the Sample and ensure timely Results Management.

⁶⁹ CAS 2018/A/5584.

- ❖ An Independent Witness may be appointed even if the Athlete has indicated that he/she will be present and/or represented.

Pursuant to the ISL, the “B” Sample analysis should occur as soon as possible following the reporting of the “A” Sample AAF.⁷⁰ The timing of the “B” Confirmation Procedure may be strictly fixed in the short term and postponement may not be possible, if circumstances so justify it. This can notably and without limitation be the case when the further postponement of the “B” Sample analysis could significantly increase the risk of Sample degradation.



GUIDANCE

Prior to a notification of charge for violation of Code Article 2.1, the RMA should perform all repeat or additional analysis, including but not limited to GC/C/IRMS and confirmation procedures, to ensure all Prohibited Substances found in the Athlete’s Sample are included in the notification.

- ❖ After an Athlete is charged with a Code Article 2.1 ADRV, any repeat or additional analysis cannot be conducted without the approval from the hearing body for that case or the Athlete’s consent (Code Article 6.5).
 - ❖ Any additional analysis that takes place before an “A” Sample or “B” Sample analytical result is reported is not Further Analysis.
 - ❖ Prior to any Athlete being formally notified and charged with an ADRV, the Laboratory does not need approval or permission from anyone to perform repeat analysis, analysis using new methods, or any other form of analysis on that Sample.
 - ❖ Finally, as required by Code Article 6.5, after an Athlete has been formally notified and charged with an Article 2.1 ADRV on account of the Sample, then no additional analysis may be performed on that Sample without the consent of the Athlete or approval of a hearing body.

If a Laboratory is going to report an analytical result while other analysis is still ongoing (e.g., IRMS or analysis for EPO) then it should inform the Testing Authority/RMA that it should not charge the Athlete until the additional analysis is completed. Similarly, the RMAs should, before charging an Athlete based on an analytical report of an AAF, confirm with the Laboratory that no additional analytical testing on the Sample is ongoing.

⁶⁹ CAS 2018/A/5584.

⁷⁰ ISL Article 5.3.6.2.3. As per this article, a representative of the RMA has the right to attend the “B” Confirmation Procedure.

Notification following “B” Sample Analysis

If the results of the “B” Sample analysis confirm the results of the “A” Sample analysis, the RMA shall promptly notify the Athlete of such results and shall grant the Athlete a short deadline to provide or supplement their explanations.

The Athlete shall also be afforded the possibility to admit the ADRV to potentially benefit from a one-year reduction in the period of Ineligibility under Code Article 10.8.1, if applicable, and/or to voluntarily accept a Provisional Suspension in accordance with Code Article 7.4.4. if they are not already subject to a Provisional Suspension.

Upon receipt of any explanation from an Athlete, the RMA may request further information and/or documents from the Athlete within a set deadline or liaise with third parties in order to assess the validity of the explanation. If the AAF involves a Prohibited Substance subject to a permitted route (e.g. by inhalation, by transdermal or by ophthalmic Use) and the Athlete alleged that the positive finding came from the permitted route, the RMA should assess the credibility of the explanation by contacting third parties (including scientific experts) before deciding not to move forward with Results Management.

If the “B” Sample analysis does not confirm the results of the “A” Sample analysis, and a Provisional Suspension had already been imposed or voluntarily accepted, the Provisional Suspension shall be immediately lifted.

2. Reviewing Atypical Findings (ATFs)

2.1. Situations in which a laboratory may report an ATF

An ATF is a report from a Laboratory or ABP Laboratory that requires further investigation by the RMA before the latter makes a decision on whether to consider it as an AAF.

The precise nature of the investigation depends on the Prohibited Substance associated with the ATF:

- ❖ If the Prohibited Substance is subject to specific Results Management requirements in a Technical Document, the RMA shall follow the procedures described therein.
- ❖ In case of an investigation for Atypical Findings, consult [Annex B](#) for more information.
- ❖ The RMA may also contact WADA⁷¹ to determine which investigative steps should be undertaken.

⁷¹ Such requests may be sent to the following email address: rm@wada-ama.org.

As with an AAF, an initial review of an ATF is required to determine if an applicable TUE has been granted or if any apparent departure from the ISTI or the ISL might have caused the ATF, or if it is apparent that the ingestion of the Prohibited Substance was through a permitted route (see ISRM Article 5.1.1.3 by analogy). If that review does not reveal an applicable TUE or a departure from the applicable IS, or apparent ingestion through a permitted route, the RMA conducts the required investigation.

Meat Contamination Cases

Findings for clenbuterol shall be reported as an ATF when the estimated concentration is below 5 ng/mL (corrected for SG, where necessary):

- ❖ The RMA must refer to [Stakeholder Notice regarding Meat Contamination](#)⁷² and ask the Athlete if they were recently in China, Guatemala or Mexico; and
- ❖ If so, whether they ate meat (including the type of meat, when and where it was eaten, and the quantity consumed) and to provide supporting evidence if this is the case.

If the RMA is satisfied that the Athlete recently ate meat in Mexico, China or Guatemala:

- ❖ It must then evaluate whether the analytical result is consistent with the consumption of meat estimated by the Athlete (type of meat, amount eaten, frequency, dates), by considering the excretion properties of the substance as described in the scientific literature.
- ❖ It should also consider whether the Athlete recently provided other Samples to rule out the possibility that the low level of clenbuterol detected is not the result of the tail end of the excretion of the substance as a result of the previous use of a performance-enhancing dose.
- ❖ If the Athlete did not go to one of the three countries listed above, normal Results Management process should be followed (see below).
- ❖ Please consult WADA's website for the publication or update of any notices or guidelines on cases involving potential meat contamination.

⁷² <https://www.wada-ama.org/en/resources/science-medicine/stakeholder-notice-regarding-meat-contamination-1-june-2019>.



GUIDANCE

All investigative steps described above should be documented and part of the case file;

- ❖ Although it is not expected that all Athletes will recollect all of these facts perfectly, the RMA will evaluate the Athlete's explanation and any evidence tendered to corroborate this explanation. Part of the evidence that may be submitted, in particular when the Athlete does not live in one of the three affected countries, but claims that he or she travelled there before the Sample collection is:
 - ❖ A plane ticket;
 - ❖ Restaurants receipts; and
 - ❖ Whereabouts information submitted in ADAMS, if applicable.

If, following the steps described above, the RMA is satisfied that the criteria in the Stakeholder Notice Regarding Meat Contamination are met, it shall not assert an ADRV and no Consequences shall be imposed. However, this decision remains subject to appeal by any party with a right to appeal pursuant to Code Article 13.

However, if, following the investigation as described above, the RMA concludes that the ATF was not consistent with meat contamination, an ADRV will be asserted by the RMA and the usual Results Management process will be conducted.

2.2. ATF notifications

The RMA does not need to provide notice of an ATF to the Athlete until the investigation is completed and it has decided whether it will bring the ATF forward as an AAF, with the following exceptions:

- i) Analysis of the "B" Sample is required as part of the investigation, in which case the Athlete must be notified in accordance with ISRM Article 5.2.2(a);
- ii) The RMA receives a request from an MEO shortly before one of its International Events or from a sport organization responsible for meeting an imminent deadline to select team members for an International Event, to disclose if any Athlete on the list provided by the MEO or sport organization has a pending ATF. In such instances, the RMA shall identify any Athlete, but only after the Athlete has first been provided notice of the ATF; or
- iii) If the ATF is, in the opinion of a qualified medical or expert personnel, likely to be connected to a serious pathology that requires urgent medical attention.

Once the investigation is completed, if none of the above-listed exceptions applies, and the ADO decides to bring the ATF forward as an AAF, the Athlete shall be notified as they would for an AAF.⁷³

Notwithstanding the above, for any ATF that may be due to a potential meat contamination, the RMA should notify the Athlete as part of the investigation.



GUIDANCE

- ◆ For ATFs that are inconclusive following further analysis by the Laboratory: cases may be closed as indicated in the ISRM Article 5.4.
- ◆ Additional Testing may be recommended in some specific cases.

3. Reviewing Athlete Biological Passport Findings

The pre-adjudication phase of Results Management of Atypical Passport Findings or Passports submitted to an Expert by the Athlete Passport Management Unit (APMU) when there is no Atypical Passport Finding (ATPF) shall take place as provided in Annex C – Results Management Requirements and Procedures for the Athlete Biological Passport in the ISRM. [Annex D](#) provides a flow chart for an Athlete Passport Process.

Here is a high-level view of how an ordinary ABP usually works:

- a) An Athlete will provide a number of blood and/or urine Samples overtime.
- b) These will be analyzed and the Laboratory or ABP Laboratory will measure the relevant steroidal (for urine Samples) or haematological (for blood Samples) variables and enter them into ADAMS.
- c) The Athlete's Passport is updated as soon as the biological data (steroid or haematological profile) is matched in ADAMS with the Doping Control form.
- d) In ADAMS, the Adaptive Model processes data on the biological Markers of the Passport. It will generate an ATPF if a primary Marker(s)'s value(s) is (are) outside the Athlete's intra-individual range or a longitudinal profile of a primary Marker value is outside expected ranges, assuming a normal physiological condition. An ATPF requires further attention and review.

The ABP process is managed by the APMU, a dedicated team (or individual) that is responsible for the timely management of ABPs in ADAMS on behalf of the Passport Custodian.

⁷³ See Chapter 3 (Section 1).

Following the 'one Athlete – one Passport' principle, ADOs are encouraged to work cooperatively to ensure that Testing is coordinated appropriately with all biological profiles collated within the Athlete's Passport in ADAMS. Each Athlete should have a Passport Custodian to ensure that all ADOs with Testing jurisdiction over the Athlete do not work in isolation.

The Passport Custodian is responsible for:

- ❖ Sharing relevant Passport information with other ADOs, as appropriate and in accordance with the ISPPPI, and
- ❖ The Results Management procedure.

Atypical Passport Findings

3.1. Initial Expert Review

When an ATPF has been identified in a Passport, or when the APMU considers that a review is otherwise justified,⁷⁴ the APMU shall send the profile and any other relevant information or documentation to an Expert appointed by the ADO and/or APMU, for an initial review in ADAMS (the 'Initial Expert Review').

The Expert will examine the Passport and other basic available information (e.g., Competition schedules⁷⁵) to weigh the likelihood that the Passport is the result of the Use of a Prohibited Substance or Prohibited Method against the likelihood that the Passport is the result of a normal physiological or pathological condition. Access to the relevant information in ADAMS shall be provided to the Expert in a timely manner and shall be anonymous.

The actions that follow the Initial Expert Review depend on their conclusions:

1. If the Expert considers the Passport normal, the APMU will continue its normal Testing plan; or
2. If the Expert considers that the Passport is suspicious, the APMU will provide recommendations to the Passport Custodian for Target Testing, Sample analysis, and/or request further information as required; or

⁷⁴ Please see Section C.2.2.4 of the ISRM, which indicates some of the elements that may justify a review in the absence of an ATF.

⁷⁵ Provided it cannot reveal the Athlete's identity.

3. If the Expert considers that the Passport is indicative of a 'likely doping'⁷⁶ scenario, the APMU will send the Passport to a panel of three (3) Experts, including the initial Expert, which should be done within seven (7) days of the reporting of the initial review; or
4. If the Expert considers that the Passport is indicative of a 'likely medical condition', the APMU will inform the Athlete as soon as possible via the Passport Custodian or send the Passport to other Experts.

3.2. Expert Panel Review

If the opinion of the Initial Expert Review is that of 'likely doping', pending subsequent explanations to be provided at a later stage, the Passport shall be sent to two additional Experts by the APMU. This should take place within seven (7) days of the reporting of the initial review.

The additional reviews shall be conducted without knowledge of the conclusion of the initial review. The three (3) Experts now constitute the Expert Panel, composed of the Expert appointed in the initial review and these two (2) other Experts.

The review by the three (3) Experts must follow the same procedure, where applicable, as presented in section C.2.2 of Annex C of the ISRM. The three (3) Experts shall each provide their individual reports in ADAMS, which should take place within seven (7) days after receipt of the request.

The APMU is responsible for liaising with the Experts and for advising the Passport Custodian of the subsequent Expert assessment. The Experts can request further information, as they deem relevant for their review, notably information related to medical conditions, Competition schedule and/or Sample(s) analysis results. Such requests are directed via the APMU to the Passport Custodian.

A unanimous opinion among the Expert Panel is necessary in order to proceed further towards declaring an Adverse Passport Finding. This means that all three (3) Experts render an opinion of "Likely doping". The conclusion of the Experts must be reached with the three (3) Experts assessing the Athlete's Passport with the same data.

To reach a conclusion of "Likely doping" in the absence of an Atypical Passport Finding, the Expert Panel shall come to the unanimous opinion that it is highly likely that the Passport is the result of the Use of a Prohibited Substance or Prohibited Method and that there is no reasonably conceivable hypothesis under

⁷⁶ For a "Likely doping" opinion involving an ATPF, the Expert shall come to the conclusion that the likelihood that the Passport is the result of the Use of a Prohibited Substance or Prohibited Method outweighs the likelihood that the Passport is the result of a normal physiological or pathological condition.

To reach a conclusion of "Likely doping" in the absence of an ATPF, the Expert shall come to the opinion that it is highly likely that the Passport is the result of the Use of a Prohibited Substance or Prohibited Method and that it is highly unlikely that the Passport is the result of a normal physiological or pathological condition.

which the Passport is the result of a normal physiological condition and highly unlikely that it is the result of pathological condition.

In the case when two (2) Experts evaluate the Passport as “Likely doping” and the third Expert as “Suspicious” asking for more information, the APMU shall confer with the Expert Panel before they finalize their opinion. The group can also seek advice from an appropriate outside Expert, although this must be done while maintaining strict confidentiality of the Athlete’s Personal Information.

If no unanimity can be reached among the three (3) Experts, the APMU shall report the Passport as “Suspicious”, update the APMU report, and recommend that the Passport Custodian pursue additional Testing and/or gather intelligence on the Athlete, as appropriate.

3.3. Next steps – ‘likely doping’

If the Expert Panel renders a unanimous ‘Likely doping’ opinion, the following key steps, in addition to those indicated in Sections C.4-C.7 of the ISRM, must be followed:

- i) The APMU will declare a ‘Likely doping’ evaluation in the APMU report in ADAMS;
- ii) The APMU should organize a conference call with the Expert Panel to initiate the next steps for the case, including compiling the Athlete Biological Passport Documentation Package and drafting the joint Expert report;
- iii) The APMU shall declare an Adverse Passport Finding in ADAMS, which includes a written statement of the Adverse Passport Finding, the Athlete Biological Passport Documentation Package and the joint Expert report;
- iv) Following its review of the Athlete Biological Passport Documentation Package and joint Expert report, the Passport Custodian shall:
 - a. Notify the Athlete of the Adverse Passport Finding in accordance with Article 5.3.2 of ISRM⁷⁷;
 - b. Provide the Athlete the Athlete Biological Passport Documentation Package and the joint Expert report;
 - c. Invite the Athlete to provide their own explanation, in a timely manner, of the data provided to the Passport Custodian.
- v) The APMU shall forward any explanation and supporting documentation received from the Athlete to the Expert Panel, with any additional information that the Expert Panel considers necessary to render its opinion in coordination with both the Passport Custodian and APMU;

⁷⁷ There is no mandatory Provisional Suspension to impose at this stage (see Code Article 7.4.1). However, the athlete can be invited to accept a voluntary Provisional Suspension.



GUIDANCE

Should the Athlete's explanation disclose his/her identity to the Expert Panel, there is no need to anonymize the Athlete's explanation since this phase does not have to be anonymous.

- vi) The Expert Panel shall reassess or reassert the case and conclude either:
 - a. That their 'Likely doping' opinion is unanimous on the basis of the information in the Passport and any explanation provided by the Athlete; or
 - b. That, based on the available information, they are unable to reach a unanimous opinion of 'Likely doping'.
- vii) If the Expert Panel unanimously concludes that the case is 'Likely doping', the APMU shall inform the Passport Custodian, which shall charge the Athlete in accordance with ISRM Article 7 and conduct Results Management as indicated in the ISRM⁷⁸;
- viii) If the Expert Panel is unable to reach a unanimous opinion of 'Likely doping', the APMU shall update the APMU report and recommend that the Passport Custodian pursue additional Testing and/or gather intelligence on the Athlete, as appropriate. The Passport Custodian shall notify the Athlete and WADA of the outcome of the review⁷⁹;

RECOMMENDATION

If a case that was not initially pursued as "Likely doping", but was closed following explanations provided by the Athlete, has to go back to three Experts again, following the collection of additional Samples or information, it is recommended that the case in question not go back to the same three Experts as in the first review, as full anonymity may not be preserved in such case.

⁷⁸ A mandatory Provisional Suspension is to be imposed as per ISRM Article 6.2.1 (see Section 4.1 below).

⁷⁹ The Athlete should not be given detailed reasons but only informed of the basic outcome of the expert review i.e. the conclusion.

- ix) If the Athlete is found to have committed an ADRV based on the Passport, the Athlete's Passport shall be reset by the Passport Custodian at the start of the relevant period of Ineligibility and a new Biological Passport ID shall be assigned in ADAMS.⁸⁰

4. Reviewing Whereabouts Failures and Whereabouts Violations

The pre-adjudication phase of Results Management of potential Whereabouts Failures shall take place as provided in Annex B – Results Management for Whereabouts Failures of the ISRM.

Three (3) Whereabouts Failures by an Athlete within any 12-month period amounts to an ADRV under Code Article 2.4. The Whereabouts Failures may be any combination of Filing Failures and/or Missed Tests, which satisfy the requirements indicated in Articles B.2.1 and B.2.4 of the ISRM (respectively), declared in accordance with ISRM Article B.3 and adding up to three (3) in total.⁸¹

The 12-month period referred to in Code Article 2.4 starts to run on the date that an Athlete commits the first Whereabouts Failure being relied upon in support of the allegation of a violation of Code Article 2.4.

If two (2) more Whereabouts Failures occur during the ensuing 12-month period, then a Code Article 2.4 ADRV is committed, irrespective of any Samples successfully collected from the Athlete during that 12-month period. However, if an Athlete who has committed one (1) Whereabouts Failure does not go on to commit a further two (2) Whereabouts Failures within the 12-months, at the end of that 12-month period, the first Whereabouts Failure “expires” for purposes of Code Article 2.4, and a new 12-month period begins to run from the date of their next Whereabouts Failure.

As indicated in ISRM Article B.1.3, for purposes of determining whether a Whereabouts Failure has occurred within the 12-month period referred to in Code Article 2.4:

- ❖ A Filing Failure will be deemed to have occurred (i) on the first date of the quarter where the Athlete fails to provide complete information in due time in advance of an upcoming quarter, and (ii) on the (first) date on which any information provided by the Athlete (whether in advance of the quarter or by way of update) can be shown to be inaccurate;
- ❖ A Missed Test will be deemed to have occurred on the date that the Sample collection was unsuccessfully attempted.

⁸⁰ When an Athlete is found to have committed an anti-doping rule violation on any basis other than the Athlete Biological Passport, the haematological and/or Steroidal Passport will remain in effect, except in those cases where the Prohibited Substance or Prohibited Method caused an alteration of the haematological or steroidal Markers, respectively (e.g. for AAF reported for anabolic androgenic steroids, which may affect the Markers of the steroid profile, or for the Use of ESAs or blood transfusions, which would alter the haematological Markers).

⁸¹ While a single Whereabouts Failure will not amount to an ADRV under Code Article 2.4, depending on the facts, it could amount to an ADRV under Code Article 2.3 (Evading Sample Collection) and/or Code Article 2.5 (Tampering or Attempted Tampering with Doping Control).

EXAMPLES

An Athlete had until March 15th to submit their whereabouts information for the second quarter starting April 1 but provided their whereabouts information only on April 15. The Filing Failure would be considered to have occurred on April 1.

The applicable ADO discovers (via, for example, a competition schedule) that on May 2nd, the Athlete was not where they said would be as per the whereabouts information submitted in ADAMS for the whole quarter and failed to provide an update. A Filing Failure would be considered to have occurred on May 2nd.

Based on the whereabouts information submitted by an Athlete on February 28th for the following quarter starting on April 1st, the applicable ADO decided to conduct an Out-of-Competition test on April 30th at the location indicated by the Athlete in ADAMS, but the Athlete was not present at the indicated location during their designated one-hour time slot. A Missed Test would be considered to have occurred on April 30th.

Whereabouts Failures committed by the Athlete prior to retirement as defined in Article 4.8.7.3 of the ISTI may be combined, for purposes of Code Article 2.4, with Whereabouts Failures committed by the Athlete after he/she again becomes available for Out-of-Competition Testing.⁸²

As indicated above, in Code Article 7.1.6 and ISRM Article B.3.1, the RMA in relation to potential Whereabouts Failures is the IF or NADO with whom the Athlete in question files their whereabouts information.

When a Whereabouts Failure appears to have occurred, the RMA shall obtain the information and conduct the review indicated in Articles B.3.2(a) and (b) in the ISRM.

If the RMA concludes that any of the relevant requirements have not been met (and that no Whereabouts Failure should be declared), it shall advise WADA, the IF or NADO (as applicable), and the ADO that uncovered the Whereabouts Failure, giving reasons for its decision. Each of the aforementioned ADOs shall have a right of appeal against that decision in accordance with Code Article 13.

⁸² For example, if an Athlete committed two (2) Whereabouts Failures in the six (6) months prior to their retirement, then if they commit another Whereabouts Failure in the first six (6) months in which they are again available for Out-of-Competition Testing, that amounts to a Code Article 2.4 ADRV.

If the RMA concludes that all of the relevant requirements for a Filing Failure or a Missed Test have been met, it should notify the Athlete within fourteen (14) days of the date of the apparent Whereabouts Failure. However, failure to notify the Athlete within that period does not lead to the case being closed.⁸³

The notice shall include sufficient details of the apparent Whereabouts Failure⁸⁴ to enable the Athlete to respond meaningfully, and shall give the Athlete a reasonable deadline to respond, advising whether they admit the Whereabouts Failure and, if they do not admit to the Whereabouts Failure, then to provide an explanation as to why not.

The notice should also advise the Athlete that three (3) Whereabouts Failures in any 12-month period is a Code Article 2.4 ADRV, and should indicate whether they had any other Whereabouts Failures recorded against them in the previous twelve (12) months. In the case of a Filing Failure concerning the Athlete's failure to file whereabouts information, the notice must also advise the Athlete that in order to avoid a further Filing Failure they must file the missing whereabouts information within 48 hours after receipt of the notice.⁸⁵

If the Athlete does not respond within the specified deadline, the RMA shall record the notified Whereabouts Failure against them.

If the Athlete does respond within the deadline, the RMA shall consider whether their response changes its original decision that all of the requirements for recording a Whereabouts Failure have been met.

If so, it shall so advise the Athlete, WADA, the IF or NADO (as applicable), and the ADO that uncovered the Whereabouts Failure, giving reasons for its decision. Each of them shall have a right of appeal against that decision in accordance with Code Article 13.

If not, it shall so advise the Athlete (with reasons) and specify a reasonable deadline (e.g., 14 days) by which they may request an administrative review of its decision. The Unsuccessful Attempt Report shall be provided to the Athlete at this point if it has not been provided to them earlier in the process.

If the Athlete does not request an administrative review by the specified deadline, the RMA shall record the notified Whereabouts Failure against them.

⁸³ See [CAS 2011/A/2671](#).

⁸⁴ Including a copy of the Unsuccessful Attempt Report if need be.

⁸⁵ Please see Annex B.2.1(c) of the ISRM.



GUIDANCE

To avoid having to send one additional notice, the correspondence granting the deadline to ask for the administrative review may specify that should the athlete fail to request it within the set deadline, the Whereabouts Failure will be recorded without further notice.

As per the ISRM, if the Athlete does request an administrative review before the deadline, it shall be carried out, based on the papers only, by one or more persons not previously involved in the assessment of the apparent Whereabouts Failure.⁸⁶ The purpose of the administrative review shall be to determine anew whether or not all of the relevant requirements for recording a Whereabouts Failure are met, as indicated in Annex B.2.1 or B.2.4 of the ISRM, and as applicable.

If the conclusion following administrative review is that all of the requirements for recording a Whereabouts Failure are not met, the RMA shall so advise in a timely manner the Athlete, WADA, the IF or NADO (as applicable), and the ADO that uncovered the Whereabouts Failure, giving reasons for its decision. Each of them shall have a right of appeal against that decision in accordance with Code Article 13.

However, if the conclusion is that all of the requirements for recording a Whereabouts Failure are met, it shall notify the Athlete and shall record the notified Whereabouts Failure against them.

The RMA shall promptly report a decision to record a Whereabouts Failure against an Athlete to WADA and all other relevant Anti-Doping Organizations, on a confidential basis, via ADAMS.

Where three (3) Whereabouts Failures are recorded against an Athlete within any 12-month period, the RMA shall notify the Athlete and other ADOs in accordance with ISRM Article 5.3.2⁸⁷ alleging a violation of Code Article 2.4 and proceed with Results Management in accordance with Article 5 et seq. of the ISRM.

⁸⁶ Athletes are expected to file any supporting evidence with their request for an administrative review.

⁸⁷ For further information, see mutatis mutandis Section 5.3 below.



GUIDANCE

- ❖ Although timeframes set forth in ISRM Articles B.3.2 (i.e. the RMA should notify the Athlete within fourteen (14) days of the apparent Whereabouts Failure) and B.3.4 (i.e. the RMA should bring proceedings alleging a violation of Code Article 2.4 against the Athlete within thirty (30) days of WADA receiving notice of the recording of the Athlete's third Whereabouts Failure) are indicative, not prescriptive⁸⁸, RMAs must do their utmost to abide by these deadlines and give timely notice to the Athletes in the interest of fair and effective sport justice.
- ❖ RMAs are strongly encouraged to send all notifications directly to Athletes. However, in the event the RMA elects to notify an Athlete via a third party not chosen by the Athlete, such as for instance his or her National Federation, the RMA should ensure that the Athlete receives such communication by asking the National Federation to confirm the fact that such notification was actually delivered to the Athlete.⁸⁹
- ❖ An administrative review may be conducted by one or more person that was not involved in the initial review of the case. The administrative review need not be conducted by a member (or members) of the ADO's hearing panel.

If the RMA fails to bring such proceedings against an Athlete within 30-days of WADA receiving notice of the recording of that Athlete's third Whereabouts Failure in any 12-month period, then the RMA shall be deemed to have decided that no ADRV was committed, for purposes of triggering the appeal rights set out at Code Article 13.2. However, the triggering of those appeal rights shall not prejudice the RMA from bringing a case forward after the 30-day deadline.

An Athlete asserted to have committed a Code Article 2.4 ADRV shall have the right to have such assertion determined at a full evidentiary hearing in accordance with Code Article 8 and ISRM Articles 8 and 10.

The hearing panel shall not be bound by any determination made during the Results Management process, whether as to the adequacy of any explanation offered for a Whereabouts Failure or otherwise. Instead, the burden shall be on the ADO bringing the proceedings to establish all of the requisite elements of each alleged Whereabouts Failure to the comfortable satisfaction of the hearing panel.

If the hearing panel decides that one (or two) Whereabouts Failure(s) have been established to the required standard, but that the other alleged Whereabouts Failure(s) has/have not, then no Code Article 2.4 ADRV shall be found to have occurred.

⁸⁸ See, respectively, CAS 2011/A/2671 (the deviation from the 14-day timeframe was considered as a technical issue that could be disregarded, because it did not violate the Athlete's rights nor did it cause the anti-doping rule violation) and Disciplinary Tribunal Panel SR/009/2020 World Athletics v. Wilson Kipsang Kiprotich (the limited purpose of the 30-day deadline is to trigger third party appeal rights under Code article 13).

⁸⁹ CAS 2011/A/2499.

However, if the Athlete then commits one (or two, as applicable) further Whereabouts Failure(s) within the relevant 12-month period, new proceedings may be brought based on a combination of the Whereabouts Failure(s) established to the satisfaction of the hearing panel in the previous proceedings (in accordance with Code Article 3.2.3) and the Whereabouts Failure(s) subsequently committed by the Athlete.

5. Reviewing other Anti-Doping Rule Violations (ADRVs)

5.1. Investigation and collection of evidence

When an ADO becomes aware of a potential ADRV other than an AAF, an ATF, a whereabouts violation or ATPF, it should conduct any appropriate follow-up investigation without unnecessary delay and notify WADA.

Other potential ADRVs include:

- 1. Use or Attempted Use** (Code Article 2.2)
Use or Attempted Use of a Prohibited Substance or Prohibited Method described on the Prohibited List. These violations include Athletes who Used a Prohibited Substance without having a TUE⁹⁰ or ABP cases.⁹¹ Attempted Use includes the seizure of a package addressed to an Athlete purporting to contain a Prohibited Substance⁹² or purchase of a product containing a prohibited but not properly delivered⁹³.
- 2. Evading, Refusing or Failing to Submit to Sample collection** (Code Article 2.3)⁹⁴
- 3. Tampering or Attempted Tampering with any part of Doping Control** (Code Article 2.5)⁹⁵
- 4. Possession** (Code Article 2.6)
Possession can be the actual physical Possession of banned substances or constructive Possession⁹⁶, where e.g. banned substances are found in the home or car of an Athlete or Athlete Support Personnel.
- 5. Trafficking or Attempted Trafficking** (Code Article 2.7)
Trafficking or Attempted Trafficking cases often come from collaboration with police forces. This can include cases where a coach or an Athlete gives or sells Prohibited Substances to other Athletes.⁹⁷

⁹⁰ See, for instance, CAS A2/2015; CAS 2016/O/4488.

⁹¹ CAS 2015/A/4009 International Association of Athletics Federations (IAAF) v. All Russia Athletics Federation & Valeriy Borchin & RUSADA.

⁹² UKAD v Russell Kendall SR/0000120228.

⁹³ CAS A4/2007 ASADA v/Andrew Wyper.

⁹⁴ See Section 5.2 below.

⁹⁵ See Section 5.2 below.

⁹⁶ See, for instance, CAS 2016/A/4575; CAS 2018/A/5989.

⁹⁷ CAS 2016/O/4575.

6. Administration or Attempted Administration (Code Article 2.8)

This is a wide provision and includes providing, supplying, supervising, or otherwise participating in someone else's use of a prohibited substance. Most common example of an administration charge would be against team doctors or coaches or any other kind of Athlete Support Personnel including helping an Athlete use a prohibited substance by injecting them.⁹⁸

7. Complicity (Code Article 2.9)

This includes assisting, encouraging and covering up an anti-doping rule violation, for example, an Athlete Support Personnel that encouraged an Athlete not to undergo Doping Control⁹⁹ or tried to bribe a DCO during sample collection.¹⁰⁰

8. Prohibited Association by an Athlete or Other Person (Code Article 2.10)

An athlete may not train with a coach who is serving a period of ineligibility, for example.

9. Acts to Discourage or Retaliate Against Reporting to Authorities (Code Article 2.11)

This includes cases where an athlete for example threatens another athlete to discourage the latter from reporting a potential anti-doping rule violation to an ADO

ADOs should make use of all reasonably available investigative resources to conduct investigations. It is important that the ADO gather as much information as possible in the form of admissible and reliable evidence, to ensure that a reasoned decision can be made by a hearing panel. Any investigation or evidence gathering should be conducted confidentially, fairly and effectively.

As stipulated in Code Article 3.2, facts related to ADRVs may be established by any reliable means. The above-listed non-analytical violations may be established by the following evidence, from all available sources: Athlete or other Person's admission, credible testimony of third Persons, reliable documentary evidence (e.g., picture, video (including video surveillance), other documents), reports (DCO, police, other regulatory and disciplinary bodies), and other analytical data/information (this list is non-exhaustive).¹⁰¹

The reporting/recording of facts, events or incidents that could constitute an ADRV should be made by the witnesses as soon as possible after they occur. Any contemporaneous record or information may prove extremely useful to support an ADRV (e.g. telephone records, photos, third person statement, and other testimony).

⁹⁸ UKAD v Skafidas SR/NADP/507/2015

⁹⁹ CAS 2018/A/5885 & 5936.

¹⁰⁰ Alleged violations of Attempted Tampering and Complicity may be closely linked to one another in this situation (see CAS 2018/A/6047).

¹⁰¹ See, for instance, CAS 1998/211; CAS 2004/A/607; CAS 2008/A/1470; CAS 2009/A/1879; CAS 2016/A/4828; CAS 2016/A/4487; CAS 2018/A/5654 & 5655.

5.2. Investigating a possible failure to comply (evading, refusal, failure to submit to sample collection or tampering)¹⁰²

For violations described in Code Article 2.3, there is a key difference between:

- i) Failure to submit to Sample collection;
- ii) Refusal cases; and
- iii) Evasion cases.

For the first two ADRVs, the Athlete must have been notified, whereas, in the latter case, the Athlete will have avoided being notified.

As defined in Code Article 2.5, Tampering (or Attempted Tampering) requires the ADO to prove that an Athlete or Athlete Support Personnel's conduct subverted the Doping Control process and was intended to do so. This can include, for example:

- i) Providing fraudulent third-party notification to the Doping Control Personnel¹⁰³;
- ii) Offensive conduct towards a Doping Control Official¹⁰⁴;
- iii) Providing false information, forged documents and/or fraudulent information to an ADO¹⁰⁵;
- iv) Attempting to blackmail the RMA¹⁰⁶;
- v) Providing false testimony before a hearing panel.¹⁰⁷

For failure to submit to Sample collection and refusal cases, the issue of whether or not there was a potential ADRV largely depends on the Doping Control documentation and the witness evidence of the relevant Doping Control personnel.

As a preliminary point, the DCO is responsible for providing a detailed written report of any possible Failure to Comply and reporting it to the RMA (or Testing Authority, as applicable) as soon as possible. The DCO shall make sure that all Sample Collection Personnel who witnessed the events that could amount to a potential ADRV provide their statement and contact details. The Failure to Comply may also be followed up by the Testing Authority and reported to the RMA as soon as practicable.

¹⁰² In cases involving a potential violation of Code Articles 2.3 and 2.9, ADOs should consider whether Tampering is an alternative charge (see, for instance, CAS 2018/A/6047).

¹⁰³ In 2010 UKAD v. Offiah, a player who was not registered with the team assumed the identity of registered player in order to compete. That player was selected to provide a Sample and informed the Doping Control Personnel that he did not have a photo ID. The third party confirmed the false identity of the player and was found guilty of Tampering.

¹⁰⁴ UKAD 2016 UKAD v. Barlow.

¹⁰⁵ Such as false medical information (see, for instance, CAS 2015/A/3979; Disciplinary Tribunal Panel SR/140/2018 IAAF v. Jemima Jelagat Sumgong).

¹⁰⁶ UCI ADT 05.2016 & 02.2017 UCI v. Jure Kocjan.

¹⁰⁷ UKAD 2015 UKAD v. Georgios Skafidas; Disciplinary Tribunal Panel SR/009/2020 World Athletics v. Wilson Kipsang Kiprotich.

The RMA (or Testing Authority, as applicable) will notify WADA (including via ADAMS) when the possible Failure to Comply comes to its attention and it will conduct a review of the potential Failure to Comply based on all of the relevant information and documentation.

- a) The RMA (or Testing Authority, as applicable) will need to review the Doping Control documentation (including any comments written by the Athlete) to ensure that (in cases of a refusal or failure to submit) the Athlete was properly notified, understood the implications of being notified and, in particular, was clearly advised of the potential implications of not providing a Sample.
- b) In case of a potential violation of Code Article 2.3 (refusing or failing to submit to Sample collection), the RMA should assess whether or not it was physically, hygienically and morally possible for the Athlete to provide a Sample.¹⁰⁸ The RMA should obtain the witness statements of the Sample Collection Personnel who effectively witnessed the departures or refusal at the earliest convenience.

If the RMA considers that there has been a potential Failure to Comply, the Athlete or other Person shall be promptly notified in accordance with ISRM Article 5.3.2 and provided with an opportunity to respond. Further Results Management shall be conducted pursuant to Article 5 onwards of the ISRM.



GUIDANCE

It is good practice to get the Athlete's explanation as to why they refused to provide a Sample, or failed to comply with such a request, and to conduct and complete any follow-up investigations before disciplinary proceedings begin.

For example, if an Athlete provides an explanation as to why they had to terminate the Sample Collection Session before a Sample was collected, that explanation should be investigated by the RMA to ascertain if it might constitute a "compelling justification" for not providing a Sample. Any additional necessary information about the potential Failure to Comply shall be obtained from all relevant sources (including the Athlete or other Person) as soon as possible and recorded.

¹⁰⁸ CAS 2013/A/3077; CAS 2016/A/4631.

WHAT IS A COMPELLING JUSTIFICATION?

- ❖ Numerous CAS cases have established that Athlete bears burden to establish that they had a compelling justification to refuse or fail to provide a Sample;¹⁰⁹
- ❖ Compelling justification must be construed narrowly;¹¹⁰
- ❖ It must be “truly exceptional”¹¹¹ and “exceptional, indeed unavoidable”;¹¹²
- ❖ To be determined objectively, i.e. whether objectively, the Athlete was justified by compelling reasons to forego the test.¹¹³
- ❖ The following examples do not constitute compelling justifications:
 - ❖ Desire to go to church and need to go to work;
 - ❖ Obeying instructions of coach and club President;
 - ❖ Need to get home to assist wife and sick children;
 - ❖ Minor Athlete ordered to leave DCS by her mother.
- ❖ Cases where compelling justifications have been upheld:
 - ❖ The Athlete’s wife was giving birth at the hospital;¹¹⁴
 - ❖ The Athlete’s father was in hospital in life threatening condition.¹¹⁵

For evasion cases, the RMA should review the Doping Control documentation carefully and interview as many Persons as possible who were present at the time of the alleged evasion.

In both Failure to Comply and refusal cases, the RMA should investigate the matter promptly and, in particular, interview the relevant DCO or Sample Collection Personnel as soon as they are available. The RMA should ensure that the relevant DCO is available to provide evidence at any hearing.

If the RMA decides not to move forward with any Failure to Comply case, its decision must be notified in accordance with ISRM Article 5.4.

¹⁰⁹ CAS 2013/3279; CAS 2013/A/3077; CAS 2005/A/925; CAS 2008/A/1557.

¹¹⁰ CAS 2008/A/1557.

¹¹¹ CAS 2005/A/908.

¹¹² NADP Appeal Tribunal 2010 Jones v WRU.

¹¹³ CAS 2013/A/3279.

¹¹⁴ Board Judicial Committee 2007 IRB v Nelo Lui.

¹¹⁵ Board of Hellenic Swimming Federation 2009 Greek Swimming Federation v. Xynadas.

5.3. Notification of other ADRVs

Based on the results of its investigation, if an ADO concludes that proceedings should be brought against an Athlete or other Person asserting the commission of an ADRV, it gives notice of that decision in accordance with ISRM Article 5.3.2 and Code Article 14.1.

Prior to notifying the Athlete or other Person of the asserted ADRV, the RMA determines if a prior ADRV exists. The RMA shall consult ADAMS and contact WADA and other relevant ADOs to determine if the ADRV at stake is the first one committed by the Athlete or other Person (Code Article 7.3). This is important, given that the Consequences set forth by the Code are very different depending on the existence of a previous ADRV.

The first notification of an ADRV must identify the potential ADRV in question and the applicable Consequences, and clearly describe the factual circumstances upon which the allegations are based (including, among other elements, the Sample code number), and provide all relevant evidence in support of those facts that the RMA considers demonstrate the commission of the ADRV.

The Athlete or other Person must be given the opportunity to provide a written explanation before formal charges are brought against them and to provide Substantial Assistance, and have the opportunity to admit the ADRV and, if applicable, potentially benefit from a one-year reduction in the period of Ineligibility (Code Article 10.8.1) or seek to enter into a case resolution agreement (Code Article 10.8.2).

Upon receipt of the Athlete's or other Person's explanation, the RMA may request further information and/or documents from the Athlete or other Person within a set deadline or liaise with third parties in order to assess the validity of the explanation.

If relevant and applicable, the Athlete or other Person shall be informed of any matters relating to a Provisional Suspension, including the possibility to accept a voluntary Provisional Suspension.

If an ADO concludes that proceedings should not be brought against the Athlete or other Person, it shall notify WADA and the Athlete or other Person's IF and NADO in writing in accordance with ISRM Article 5.4.

CHAPTER 4

How to impose provisional suspensions

RESULTS MANAGEMENT BASICS

SECTION 1

Who is in charge of results management and how

Initial considerations

PRE-HEARING PHASE

SECTION 2

How to review cases

How to impose provisional suspensions

What is in the charge letter

ADJUDICATION PROCESS

SECTION 3

How to enter into results management agreements

How to prepare for hearings

What to include in a decision

What to know about appeals

SECTION 4 SUBSTANTIAL ASSISTANCE

A Provisional Suspension is a conservative measure which:

- i) Is imposed by an RMA upon an Athlete or other Person either when the Person is notified or charged with an ADRV or subsequently.
- ii) Protects the integrity of Competition and strikes a balance between the rights of an individual Athlete or other Person and the rights of others involved in sport by preventing the former from temporarily participating in any capacity in any Competition or activity prior to a final decision.
- iii) Is mandatory in certain situations, but discretionary in others.

The mechanics for imposing a Provisional Suspension should be set out in the relevant ADO's anti-doping rules and/or in the processes adopted by the relevant RMA:

- i) Usually, a simple notification of a Provisional Suspension contained within the notification or charge communication is sufficient.
- ii) Implementation of the Provisional Suspension depends on the facts of a particular case and the sport involved.

1. Imposing mandatory Provisional Suspensions

As indicated in Code Article 7.4.1, if an Athlete is notified of an AAF or Adverse Passport Finding (upon completion of the Adverse Passport Finding review process) related to Prohibited Substance or a Prohibited Method other than a Specified Substance or a Specified Method, a Provisional Suspension must be imposed promptly following the review and notification required by Code Article 7.2:

- ❖ The review and notification required by Code Article 7.2 is indicated in ISRM Article 5.
- ❖ More specifically, when mandatory, a Provisional Suspension shall be imposed at the point of the notification provided to the Athlete as specified in ISRM Art. 5.1.2.1.

Requirements

A Provisional Suspension may not be imposed unless the rules of the ADO provide the Athlete or other Person with:

- ❖ An opportunity for a Provisional Hearing, either before imposition of the Provisional Suspension or on a timely basis after imposition of the Provisional Suspension; or
- ❖ An opportunity for an expedited hearing in accordance with Article 8 on a timely basis after imposition of a Provisional Suspension.
- ❖ The rules of the ADO shall also provide an opportunity for an expedited appeal¹¹⁶ against the imposition of a Provisional Suspension, or the decision not to impose a Provisional Suspension, in accordance with Code Article 13.

¹¹⁶ An expedited hearing is understood to mean, for example, hearings with a shortened deadline and/or based on the papers.

Lifting

A mandatory Provisional Suspension may be lifted in one of the following situations:

- i) The Athlete demonstrates to the hearing panel that the violation is likely to have involved a Contaminated Product.¹¹⁷
- ii) The violation involves a Substance of Abuse¹¹⁸ (such as cocaine) and the Athlete establishes entitlement to a reduced period of Ineligibility under Code Article 10.2.4.1. The implementation of this provision requires that the Athlete be informed in the first notification described in ISRM Article 5.1.2.1 that he/she has the possibility to bring such defense and to benefit from the Substance of Abuse regimen – i.e. imposition of a 1 to 3-month period of ineligibility – if the Athlete qualifies for it.
- iii) The subsequent “B” Sample analysis does not confirm the “A” Sample analysis as stipulated in Code Article 7.4.5. Although the Athlete shall not be subject to any further Provisional Suspension on account of a violation of Code Article 2.1, the RMA may nonetheless decide to maintain or re-impose a Provisional Suspension based on another violation notified to the Athlete, e.g. a violation of Code Article 2.2.

A hearing body’s decision not to eliminate a mandatory Provisional Suspension on account of the Athlete’s assertion regarding a Contaminated Product is not appealable.

2. Imposing optional Provisional Suspensions

Imposition

ADOs may adopt rules, applicable to any Event for which the ADO is the ruling body or to any team selection process for which the ADO is responsible or where the ADO is the applicable IF or has RMA over the alleged ADRV, permitting Provisional Suspensions to be imposed for anti-doping rule violations not covered by Code Article 7.4.1 prior to analysis of the Athlete’s “B” Sample or final hearing as described in Code Article 8.

¹¹⁷ The Code defines a Contaminated Product as a product that contains a Prohibited Substance that isn’t disclosed on the product label or in information available in a reasonable Internet search. For further guidance regarding Provisional Suspensions and Contaminated Products, see section 4 below.

¹¹⁸ A Substance of Abuse includes any Prohibited Substance identified as such on the Prohibited List because they are frequently abused in society outside of the context of sport.

Whether or not to impose a Provisional Suspension is a matter for the RMA to decide in its discretion, taking into account all the facts and evidence:

- ❖ The RMA should keep in mind that if an Athlete continues to compete after being notified and/or charged in respect of an ADRV, and is subsequently found to have committed an ADRV, any results, prizes and titles achieved and awarded in that timeframe may be subject to Disqualification and forfeited.
- ❖ Given the potentially disruptive effect on sport and other Athletes, it is usually recommended that the RMA impose a Provisional Suspension.

Requirements

A Provisional Suspension may not be imposed unless the rules of the ADO provide the Athlete or other Person with:

- ❖ An opportunity for a Provisional Hearing, either before imposition of the Provisional Suspension or on a timely basis after imposition of the Provisional Suspension; or
- ❖ An opportunity for an expedited hearing in accordance with Article 8 on a timely basis after imposition of a Provisional Suspension.
- ❖ The rules of the ADO shall also provide an opportunity for an expedited appeal against the imposition of a Provisional Suspension, or the decision not to impose a Provisional Suspension, in accordance with Code Article 13.

Lifting

The optional Provisional Suspension may be lifted either by order of a hearing panel or at the discretion of the RMA at any time prior to the hearing panel decision under Code Article 8, unless provided otherwise.

If imposed, a Provisional Suspension may be lifted, for instance, in the following circumstances:

- ❖ The violation involves a Substance of Abuse (see reasons provided in Section 4.1 above);
- ❖ It is apparent, based on facts and evidence already available, that the maximum period of Ineligibility that may be imposed will be less than or equal to the period of Provisional Suspension already served and respected by the Athlete or other Person.

3. Dealing with voluntary Provisional Suspensions¹¹⁹

Imposition

An Athlete or other Person can, on their own initiative, voluntarily accept a Provisional Suspension from the relevant RMA, with any period covered by the suspension credited against any period of Ineligibility later imposed.

An RMA should require that notice of any voluntary Provisional Suspension be communicated in writing.

Requirements

An Athlete may only voluntarily accept a Provisional Suspension following notification and prior to the later of:

- ❖ The expiration of 10 days from the report of the “B” Sample (or waiver of the “B” Sample); or
- ❖ The expiration of 10 days from the notice of any other ADRV; or
- ❖ The date on which the Athlete first competes after such report or notice.¹²⁰

Other Persons, may, on their own initiative, voluntarily accept a Provisional Suspension if they do so within 10 days from the notice of the ADRV.

Upon such voluntary acceptance, the Provisional Suspension shall have the full effect and be treated in the same manner as if the Provisional Suspension had been imposed under Code Article 7.4.1 or 7.4.2.¹²¹

Lifting

At any time after voluntarily accepting a Provisional Suspension, the Athlete or other Person may withdraw such acceptance.

However, in such case, the Athlete or other Person shall not receive any credit for time previously served during the Provisional Suspension. Further, once withdrawn, the Athlete or other Person will be prevented from voluntarily accepting another Provisional Suspension during the same disciplinary proceedings.

¹¹⁹ Code Article 7.4.4 and ISRM Article 4.4.

¹²⁰ Code Article 7.4.4

¹²¹ Ibid

4. Dealing with Provisional Suspensions and Contaminated Products

Although a Provisional Suspension is mandatory in respect of AAF or ADRV involving Prohibited Substances that are not classified as Specified Substances on the Prohibited List¹²², an RMA may decide not to impose or to lift a Provisional Suspension if it is satisfied that (a) the Athlete's explanation regarding the Use of a Contaminated Product is credible, and (b) no unfairness to other Athletes will result from the Athlete being permitted to compete.

The intent of allowing a Provisional Suspension lifted on the ground that the AAF was likely to have involved a Contaminated Product is to avoid having an Athlete subject to a Provisional Suspension during the proceedings, then be suspended for a period that is shorter than the length of the proceedings themselves.

Proof

When notified of their Provisional Suspension by the RMA, the Athlete should be informed that they can submit evidence that this positive test result is the consequence of the use of a Contaminated Product, and therefore avoid the imposition of a Provisional Suspension.

The Athlete has the burden of proof and will need to explain how and why the Contaminated Product was used, and why they believe that the relevant product falls within the Code definition.

Such evidence could include the report produced by the Laboratory¹²³ that analyzed the product in question. In that regard, it is strongly recommended that supplement(s) and/or preparation(s) suspected to contain the Prohibited Substance(s) responsible for the AAF be submitted for analysis to a WADA-accredited Laboratory. This is only permitted if specifically requested by an ADO or hearing panel as part of a Results Management or adjudication process or, if the request is made by an Athlete, with the permission of the ADO.¹²⁴ In such circumstances, it is also recommended that the following guidance is adhered to:

- i) A sealed container of the supplement and/or product bearing the same batch number and expiry date as the opened container is provided;
- ii) The remainder of the container used by the Athlete (if available) is provided;

¹²² See Code Article 4.2.2.

¹²³ It should be recalled that WADA-accredited Laboratories are not permitted to analyze commercial material for Athletes (i.e. dietary or herbal supplements), unless as provided in Section 3.4 of the Code of Ethics for Laboratories and ABP Laboratories in the ISL.

¹²⁴ See Article 3.4 of the Code of Ethics for Laboratories in the ISL.

- iii) If the container(s) analyzed is (are) found to contain the Prohibited Substance(s) at stake, the Laboratory's opinion or another expert's opinion as to whether such presence is compatible with (i) the Athlete's explanations and, if applicable, (ii) the spiking of the product and/or supplement, may be requested.

Discretionary Power

The Athlete's explanation in itself does not mean that a Provisional Suspension must be lifted. There may be good reasons why a Provisional Suspension should not be lifted, e.g. the Athlete retains the benefit accrued from the Use of the relevant Prohibited Substance.

However, a Provisional Suspension "may" be eliminated, for instance if an Athlete is notified by an RMA in relation of an AAF or another ADRV involving a non-Specified Substance which may be connected to the Use of a Contaminated Product, then the Athlete can request that the RMA lift the Provisional Suspension.

If the RMA disagrees with the Athlete's request (e.g. it does not accept the assertion that the AAF relates to the use of a Contaminated Product, or the relevant product does not fall within the Code definition of "Contaminated Product.", or there will be a wider risk of unfairness if the Athlete is permitted to compete), the issue will be resolved at a hearing. As per Code Article 7.4.1, a hearing's body decision not to eliminate a mandatory Provisional Suspension on such account is not appealable.

5. Dealing with other Provisional Suspension formalities and implications

Notification

Unless already notified pursuant to the ISRM, any imposition of a Provisional Suspension notified to the Athlete or other Person or any voluntary acceptance of a Provisional Suspension, or lifting of either, shall promptly be notified by the RMA to the Athlete's or other Person's NADO(s), IF and WADA and shall promptly be reported into ADAMS.¹²⁵

A Provisional Suspension shall start on the date on which it is notified (or deemed to be notified) by the RMA to the Athlete or other Person.

Start and End Dates

The period of Provisional Suspension shall end with the final decision of the hearing panel conducted under Code Article 8, unless lifted earlier in accordance with ISRM Article 6. However, the period of

¹²⁵ To the extent not already set out in the communication to the Athlete or other Person, this notification shall include the following information (if applicable): the Athlete's or other Person's name, country, sport and discipline within the sport.

Provisional Suspension shall not exceed the maximum length of the period of Ineligibility that may be imposed on the Athlete or other Person based on the relevant anti-doping rule violation(s).

If a Provisional Suspension is imposed based on an “A” Sample Adverse Analytical Finding and a subsequent “B” Sample analysis does not confirm the “A” Sample analysis result, then the Athlete shall not be subject to any further Provisional Suspension on account of a violation of Code Article 2.1.¹²⁶

In circumstances where the Athlete (or the Athlete’s team as may be provided in the rules of the applicable Major Event Organization or IF) has been removed from an Event based on a violation of Code Article 2.1 and the subsequent “B” Sample analysis does not confirm the “A” Sample finding, if, without otherwise affecting the Event, it is still possible for the Athlete or team to be reinstated, the Athlete or team may continue to take part in the Event.

Scope

As indicated in Code Article 10.14.1, the scope of the prohibition against participation during a period of Ineligibility is the same as during a Provisional Suspension.

This means that until a final decision is taken pursuant to Code Article 8, any Athlete or other Person who is subject to a Provisional Suspension by a Signatory ADO, an appellate body or CAS is automatically prohibited from participating:

- i) In any capacity in any sport¹²⁷;
- ii) In a Competition or activity (other than authorized anti-doping Education or rehabilitation programs) authorized or organized by any Signatory, any Signatory’s member organization, or a club or other member organization of a Signatory’s member organization, or
- iii) In competitions authorized or organized by any professional league or any international- or national-level event organization or any elite or national-level sporting activity funded by a governmental agency.

In that regard, the fact that the Athlete may have paid for participating in any of the above Competitions and/or activities (such as attending a training camp or practice) is in that context irrelevant.¹²⁸

¹²⁶ The RMA may nonetheless decide to maintain and/or re-impose a Provisional Suspension on the Athlete based on another ADRV notified to the Athlete, e.g. a violation of Code Article 2.2.

¹²⁷ Code Article 15.1.1.1.

¹²⁸ See, for instance, CAS 2016/A/4702.

Violation of the Prohibition against Participation

The Code has entrenched a consistent CAS jurisprudence according to which the “obligation to respect a provisional suspension in order to receive credit for that period of ineligibility applies to the provisional suspension as a whole and not merely to a portion of it.”¹²⁹

Therefore, as per Code Article 10.14.3, any violation of the prohibition against participation during a Provisional Suspension as described above shall result in the following consequences for the Athlete or other Person:

- ❖ Receiving no credit for any period of the Provisional Suspension served, including for the portion of it that was actually respected;
- ❖ Disqualification of any results obtained during such participation.

¹²⁹ See, for instance, CAS 2014/A/3820, para.111.

CHAPTER 5:

What is the charge letter

RESULTS MANAGEMENT BASICS

SECTION 1

Who is in charge of results management and how

Initial considerations

PRE-HEARING PHASE

SECTION 2

How to review cases

How to impose provisional suspensions

What is in the charge letter

ADJUDICATION PROCESS

SECTION 3

How to enter into results management agreements

How to prepare for hearings

What to include in a decision

What to know about appeals

SECTION 4 SUBSTANTIAL ASSISTANCE

After the RMA has received the Athlete or other Person's explanation [regarding the asserted ADRV¹³⁰], or the deadline to provide an explanation has expired, the RMA shall promptly charge the Athlete or other Person if it remains satisfied that an ADRV has been committed.

¹³⁰ See notifications under ISRM Article 5.

1. Drafting a charge letter

The RMA shall include the following in the letter of charge addressed to the Athlete or other Person:

- a) The provisions of the ADO's anti-doping rules asserted to have been violated;
 - ❖ Whereas it is the RMA's duty to set out all and any alleged ADRV's against the Athlete or other Person, the RMA is not limited by the anti-doping rule violation(s) indicated in the notification sent pursuant to ISRM Article 5. In its discretion, the RMA may decide to assert further ADRV(s) in its notice of charge.
 - ❖ The RMA's failure to formally charge an Athlete with an anti-doping rule violation that is in principle an integral part of a more specific (asserted) ADRV – e.g. a Use violation (Code Article 2.2) as part of a Presence violation (Code Article 2.1), or a Possession violation (Code Article 2.6) as part of an asserted Administration violation (Code Article 2.8) – shall not prevent a hearing panel from finding that the Athlete or other Person committed a violation of the subsidiary ADRV in the event that they are not found to have committed the explicitly asserted ADRV.
- b) A detailed summary of the relevant facts upon which the assertion is based, enclosing any additional underlying evidence not already provided in the notification under ISRM Article 5;
 - ❖ Prior to charging an Athlete or other Person, the RMA must remain satisfied that there is still a case to answer based on the evidence before it, i.e. the strength of the evidence relied upon would likely establish, to the Panel's comfortable satisfaction, each element of the ADRV(s) alleged to be committed.
 - ❖ However, the RMA is not be prevented from relying on other facts and/or adducing further evidence not contained in the notification letter under ISRM Article 5.
 - ❖ The RMA may also rely on other facts and/or evidence that would become available to it after the charge letter under ISRM Article 7 is sent to the Athlete or other Person, including during the hearing process at first instance and/or on appeal.
- c) The specific Consequences being sought if the asserted ADRV(s) is/are upheld;

- ❖ In the absence of any explanations provided by the Athlete or other Person at this stage, the RMA should specify the maximum period of Ineligibility and other Consequences under the Code.¹³¹
 - ❖ The RMA may adjust the specific Consequences being sought where explanations from the Athlete or other Person are already available.
 - ❖ The RMA must also make it clear that such Consequences will have binding effect on all Signatories in all sports and countries as per Code Article 15.
- d) A deadline of not more than 20 days from receipt of the charge letter (which may be extended only in exceptional cases) to the Athlete or other Person to either (a) admit the asserted ADRV(s) and to accept the proposed Consequences by signing, dating and returning an acceptance of Consequences form, which shall be enclosed with the letter, or (b) to challenge in writing the asserted ADRV(s) and/or proposed Consequences, and/or make a written request for a hearing before the relevant hearing panel;
- e) An indication that, if the Athlete or other Person does not challenge the RMA's assertion of an ADRV or proposed Consequences nor request a hearing within the prescribed deadline, the RMA shall be entitled to deem that the Athlete or other Person has waived their right to a hearing and admitted the ADRV as well as accepted the Consequences set out by the RMA in the letter of charge;
- ❖ Code Article 10.8.1 (one-year reduction based on early admission and acceptance of sanction) requires a positive action from the Athlete or other Person. Therefore, this provision is not triggered where Athletes or other Persons are only deemed to have committed the ADRV(s), accepted the proposed Consequences and waived their right to a hearing (passive action).¹³²
- f) An indication that the Athlete or other Person may be able to obtain a suspension of Consequences if they provide Substantial Assistance under Code Article 10.7.1¹³³, that they may admit the ADRV(s) within 20 days from receipt of the letter of charge and potentially benefit from a one-year reduction in the period of Ineligibility under Code Article 10.8.1 (if applicable)¹³⁴ and/or seek to enter into a case resolution agreement by admitting the ADRV(s) under Code Article 10.8.2¹³⁵;

¹³¹ See Code Articles 10.2 and 10.3.

¹³² For further details, see Chapter 7.4.

¹³³ For further guidance regarding Substantial Assistance, see Section 4 of the Guidelines.

¹³⁴ For further guidance regarding early admission under Code Article 10.8.1, see Chapter 6 below.

¹³⁵ For further guidance regarding case resolution agreement, see Chapter 6.

- ❖ An Athlete or other Person making an early admission or entering into a case resolution agreement¹³⁶ may also provide Substantial Assistance and have a part of their period of Ineligibility suspended, if applicable, under the conditions set out in Code Article 10.7.1.
- g) Any matters related to a Provisional Suspension, to the extent that this matter was not dealt with in the initial letter sent to the Athlete or other Person under ISRM Article 5.¹³⁷

Notification

The notice of charge sent to the Athlete or other Person shall be simultaneously notified by the RMA to the Athlete's NADO(s), IF and WADA, and shall promptly be reported into ADAMS.

- ❖ In order to comply with this requirement, it is recommended to copy all organizations specified above of the email sent to the Athlete or other Person.
- ❖ Further, the RMA is expected to report this information in ADAMS within a week following the notification of charge.

2. Considering the procedural options

- a) If the Athlete or other Person either (i) admits the ADRV and accepts the proposed Consequences¹³⁸ or (ii) is deemed to have admitted the violation and accepted the Consequences, the RMA shall promptly issue the decision and notify it in accordance with ISRM Article 9.¹³⁹
- ❖ The decision issued by the RMA must be reasoned and contain all elements described in ISRM Article 9.1.
 - ❖ Where the decision is not in English or French, the RMA shall provide all Anti-Doping Organizations (ADOs) with a right of appeal with an English and French summary of the decision. This summary must specify the Athlete's or other Person's name, the sport, the ADRV(s), a short description of the Athlete's or other Person's explanations, the Consequences and the supporting reasons for the decision. In addition, a searchable version of the decision in the original language shall be made available to these ADOs at a minimum through ADAMS.¹⁴⁰

¹³⁶ It is recalled that admissions under Code Articles 10.8.1 and 10.8.2 are mutually exclusive.

¹³⁷ For further guidance regarding Provisional Suspensions, see Chapter 4 of the Guidelines.

¹³⁸ It is then highly recommended to have the decision counter-signed by Athlete or other Person.

¹³⁹ Subject to complex cases, ADOs are expected to issue their decisions within three weeks following the acceptance of sanction.

¹⁴⁰ Those emails can also be sent to WADA Department of Legal Affairs to the following email address: rm@wada-ama.org.

- ❖ In accordance with Code Article 14.3.2¹⁴¹, the RMA must publicly disclose the name of the Athlete or other Person, the ADRV committed – including the name of the Prohibited Substance or Prohibited Method if applicable –, and the Consequences imposed.
 - ❖ Lastly, the Athlete and other Person must be made aware of their rights and obligations as described in ISRM Article 9.2.
- b) If, after the Athlete or other Person has been charged, the RMA decides to withdraw the charge, it must notify the Athlete or other Person and give notice (with reasons) to the ADOs with a right of appeal under Code Article 13.2.3.
- c) Subject to ISRM Article 7.6, if the Athlete or other Person requests a hearing, the matter shall be referred to the RMA's hearing panel – or, if applicable, to the CAS Anti-Doping Division – and will be dealt with pursuant to Code Article 8.
- ❖ In accordance with Code Article 14.3.1, the RMA may decide to Publicly Disclose the identity of the Athlete or other Person, the Prohibited Substance or Prohibited Method, the nature of the ADRV, and whether a Provisional Suspension has been imposed, after the Athlete or other Person has received the notice of charge in accordance with ISRM Article 7. As this Public Disclosure is not required by the Code, this decision is left to the entire discretion of the RMA.

¹⁴¹ See also Comment to this Article.

SECTION 3

Adjudication process

This section includes Chapters 6 to 9. This section will provide support for Code Articles 8, 10.8 and 13 as well as ISRM Articles 8 to 10 by helping you understand all the requirements related to case resolution agreements, hearing panels and the hearing process (both in first instance and in appeals) and how to draft decisions.



CHAPTER 6

How to enter into results management agreements

RESULTS MANAGEMENT BASICS

SECTION 1

Who is in charge of results management and how

Initial considerations

PRE-HEARING PHASE

SECTION 2

How to review cases

How to impose provisional suspensions

What is in the charge letter

ADJUDICATION PROCESS

SECTION 3

How to enter into results management agreements

How to prepare for hearings

What to include in a decision

What to know about appeals

SECTION 4 **SUBSTANTIAL ASSISTANCE**

1. One-year reduction and acceptance of sanction

Code Article 10.8.1 provides an Athlete or other Person with the opportunity to admit an ADRV that carries an asserted period of Ineligibility of four or more years and to receive a one-year reduction in the period of Ineligibility asserted by the RMA. This admission and acceptance of the asserted period of Ineligibility must take place no later than 20 days after the Athlete or other Person receives notice of the anti-doping rule violation charge (including the applicable Consequences).

For the purposes of entering into a Result Management agreement, the Athlete or other Person's admission (which should be a positive act and not inferred from silence) merely has to accept liability for the charge and need not describe the factual background of the anti-doping rule violation.

If a Results Management agreement is entered into between the Athlete or other Person and the RMA, no further reduction of the asserted period of Ineligibility is permitted under any other rule in the Code.

2. Case Resolution Agreements

Pursuant to Code Article 10.8.2, an Athlete or other Person may enter into a case resolution agreement if they admit an ADRV after being confronted with the violation by the RMA and agree to Consequences acceptable to both WADA and the RMA, at their sole discretion.

For purposes of entering into a case resolution agreement and to allow for a meaningful assessment of the elements referred to in Code Article 10.8.2, the Athlete or other Person must describe the factual background of the anti-doping rule violation both fully and truthfully and not merely accept the accuracy of the AAF or liability for the charge (i.e. an enhanced admission).

The case resolution agreement may provide for:

- i) a reduction in the period of Ineligibility, and
- ii) that the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred.

Any reduction in the period of Ineligibility will be based on an assessment by the RMA and WADA and their application of:

- i) Code Articles 10.1-10.7 to the asserted anti-doping rule violation;
- ii) the seriousness of the violation;
- iii) the Athlete or other Person's degree of Fault; and
- iv) how promptly the Athlete or other Person admitted the violation.



GUIDANCE

RMA's are strongly encouraged to submit their requests to WADA Legal Department (rm@wada-ama.org) using the following steps:

- ◆ The Athlete or other Person makes their case to the RMA;
- ◆ The RMA builds the case file;
- ◆ The RMA submits the proposed terms of the case resolution with reasons and copy of the case file to WADA;
- ◆ Proposal agreed upon by WADA (which may be different to what is proposed by the RMA) is provided by the RMA to the Athlete or other Person for final approval.

The Athlete or other Person must serve at least one-half of the agreed upon period of Ineligibility going forward from the earlier of the date the Athlete or other Person accepted the imposition of a sanction or a Provisional Suspension which was subsequently respected by the Athlete or other Person.

Any decision by WADA and the RMA to enter – or not enter – into a case resolution agreement, the amount of reduction and the starting date of the period of Ineligibility are not matters that may be determined or reviewed by a hearing body and may not be appealed.

An Athlete or other Person seeking to enter a case resolution agreement must be permitted to discuss the admission of the ADRV with the RMA under a Without Prejudice Agreement.¹⁴²



GUIDANCE

When possible settlement negotiations and proposed Consequences are discussed with the Athlete or other Person, the RMA is strongly advised to clearly indicate, both in the subject line and in the body of the email and/or in the documents attached thereto (in particular in the letter and the acceptance of sanction form), that the aforementioned was sent without prejudice.

Where a case resolution agreement is not entered into pursuant to Code Article 10.8.2, nothing precludes the Athlete or other Person from agreeing to the sanction which is either mandated by the Code or which the RMA considers to be appropriate where flexibility in sanctioning is otherwise permitted under the Code. However, such decisions: (a) must be reasoned and are subject to the normal notification and appeal provisions under Code Articles 8.4, 13 and 14; and (b) may not grant the Athlete or other Person any reduction in the period of Ineligibility based on an assessment of the elements in Code Article 10.8.2 or provide for the commencement of the Ineligibility period otherwise than in accordance with Code Article 10.13.

¹⁴² This is defined in Appendix 1 of the Code as “a written agreement between an ADO and an Athlete or other Person that allows the Athlete or other Person to provide information to the ADO in a defined time-limited setting with the understanding that, if an agreement for Substantial Assistance or a case resolution agreement is not finalized, the information provided by the Athlete or other Person in this particular setting may not be used by the ADO against the Athlete or other Person in any Results Management proceeding under the Code, and that the information provided by the ADO in this particular setting may not be used by the Athlete or other Person against the ADO in any Results Management proceeding under the Code. Such an agreement shall not preclude the ADO, Athlete or other Person from using any information or evidence gathered from any source other than during the specific time-limited setting described in the agreement.”

CHAPTER 7:

How to prepare for hearings

RESULTS MANAGEMENT BASICS

SECTION 1

Who is in charge of results management and how

Initial considerations

PRE-HEARING PHASE

SECTION 2

How to review cases

How to impose provisional suspensions

What is in the charge letter

ADJUDICATION PROCESS

SECTION 3

How to enter into results management agreements

How to prepare for hearings

What to include in a decision

What to know about appeals

SECTION 4 **SUBSTANTIAL ASSISTANCE**

Any Athlete or other Person who has been formally charged with an ADRV is entitled to a fair and timely hearing (Code Article 8), within a reasonable time, and before a fair, impartial and Operationally Independent hearing panel that has been conferred jurisdiction by the RMA.

1. Understanding pre-hearing matters and the hearing process

RMA's Role

After the Athlete or other Person has been charged by the RMA with committing an ADRV and has indicated that they will dispute the charge and/or the Consequences, the RMA will arrange for the matter to be resolved by the hearing panel that has jurisdiction to hear and determine whether an ADRV has been committed and, if so, to determine the appropriate and relevant Consequences.

- ❖ The RMA shall bring forward the charge before the hearing panel.
- ❖ However, as provided for in Code Article 20, the RMA may also delegate this task to a Delegated Third Party, such as the International Testing Agency (ITA), and the adjudication part of Results Management to independent dispute resolution services, e.g. CAS Anti-Doping Division (CAS ADD), Sport Resolutions or *Sport Dispute Resolution Centre of Canada (SDRCC)*.

Member's Appointment of Hearing Bodies

The appointment of the hearing panel shall respect the requirements indicated in ISRM Articles 8.3 to 8.5¹⁴³, and the hearing process shall respect ISRM Articles 8.6 to 8.9.¹⁴⁴

- a) Specifically, the parties shall be notified of the identity of the hearing panel members appointed to hear and determine the matter and be provided with their declaration (completed in accordance with ISRM Article 8.4) at the outset of the Hearing Process.
- b) The parties shall also be informed of their right to challenge the appointment of any hearing panel member if there are grounds for potential conflicts of interest within seven (7) days from the ground for the challenge having become known.
 - ❖ The party who is challenging the appointment of a hearing panel member bears the burden of establishing that the equality of arms of the parties involved in the proceedings is prejudiced. Concrete evidence of the existence of an objective element or reason that could give rise to legitimate doubts about the panel member's independence (or at least a reasonable basis for it) needs to be adduced, as opposed to mere speculative assumptions.¹⁴⁵
 - ❖ For instance, the appointment of a panel member might give rise to a challenge if this member (i) has or had a personal or intimate relationship with the representative of one of the parties, (ii) works in a law firm which regularly advises one of the parties and earns significant financial income therefrom, (iii) has already expressed an opinion as to certain specific issues concerning the same case, or (iv) has an interest, either directly or indirectly, in the outcome of the case (e.g. the participation in an upcoming international event

¹⁴³ Please refer to these articles for further details relating to the size and composition of a particular hearing panel appointed to adjudicate an individual case, potential conflicts of interest and the parties' right to challenge the appointment of any hearing panel member if there are grounds for it.

¹⁴⁴ Please refer to these articles where minimum requirements that must be respected during the Hearing Process are specified (in particular, a fair, impartial and Operationally Independent process, accessible and affordable, within a reasonable time, where parties are informed of their rights – e.g. representation, evidence, witness, submission, interpretation –, including the one to request a public hearing,

¹⁴⁵ See, for instance, CAS 2014/A/3561 & 3614.

where the Athlete could honour a business obligation representing a commercial brand which is a client of the panel member).

- ❖ However, the following situations¹⁴⁶ are no basis for a challenge: (i) the panel member has previously expressed a legal opinion (e.g. in a law review article) concerning an issue that also arises in the case, (ii) the member of the hearing body has a relationship with one of the parties or its affiliates through a social media network, or (iii) the panel member and counsel for one of the parties have previously served together as arbitrators.
- c) Any challenge shall be decided upon by an independent person from the wider pool of hearing panel members (e.g. the President of the pool) or by an independent institution (e.g. an Ethics Committee, a Civil or Public Court).

Hearing Process

If not expressly set out in the hearing panel's procedural rules, the hearing panel, and ideally the Chairperson of the panel (see below), will establish a framework for how the hearing should proceed, i.e.:

- a) How the RMA will present its case and when it will disclose the evidence that it has to support the charge.
- b) How the RMA and the Athlete or other Person will exchange their evidence and provide a pre-hearing submission that explains their case.

When the hearing takes place, the Athlete or other Person will know exactly what they have been charged with, including the evidence provided by the RMA to justify the charges. Conversely, the RMA will also be prepared for the hearing as it will be aware of the arguments and evidence being led by the Athlete or other Person.

- ❖ In order to ensure, as much as possible, a timely resolution of the case, it is highly recommended that only one hearing takes place where all matters in dispute between parties will be heard (i.e. procedural arguments and submissions on the merits).

¹⁴⁶ This is a non-exhaustive list of examples taken from the [Guidelines on conflicts of interest in international arbitration](#) issued by the International Bar Association where further examples are available.

If an Athlete or other Person is charged with committing an ADRV, there will usually be a dispute as between the RMA that charged the Athlete or other Person. In the majority of cases¹⁴⁷, that dispute will be in respect of:

- a) Liability, i.e. 'Did the Athlete or other Person commit the ADRV?: dispute as to liability will not normally arise in Presence cases, because the ADRV arises if the A-Sample is found to contain a Prohibited Substance and the "B" Sample analysis confirms this finding. It will usually arise in non-analytical cases, because the ADO has a responsibility to prove that the ADRV has taken place¹⁴⁸, and/or;
- b) Consequences, i.e. 'What period of Ineligibility/other sanction should be imposed on the Athlete or other Person? Consequences are often disputed, because the Athlete or other Person seeks to show that one or more of the 'saving' provisions in Code Articles 10.5, 10.6 or 10.7 apply.

If neither liability nor Consequences are disputed, the comments in Section 6.1.4 are relevant.

2. Conducting fair hearings

The Code requires disputes to be resolved by a fair, impartial and Operationally Independent hearing panel, and for the hearing before such panel to be conducted within a reasonable time. The concept of 'fairness' is not defined, although WADA acknowledges that the concepts associated with the 'right to a fair hearing' referred to in Article 6.1 of the Convention on Human Rights are an important reference point.

Minimum Requirements

A fair Hearing Process encompasses a number of features, including:

- ❖ A hearing panel that remains fair, impartial and Operationally Independent at all times;
- ❖ An accessible and affordable Hearing Process;¹⁴⁹
- ❖ The right to be informed in a fair and timely manner of the asserted ADRV(s), the right to be represented by counsel (at the Athlete or other Person's own expense);
- ❖ The right of access to and to present relevant evidence;
- ❖ The right to submit written and oral submissions;

¹⁴⁷ In the event analytical methods or Decision Limits approved by WADA will be challenged by the Athlete, please refer to Code Article 3.2.1.

¹⁴⁸ If liability is disputed, the Consequences will be disputed also.

¹⁴⁹ Any procedural fees must be set at a level that does not prevent the accused Person from accessing the hearing. Legal aid mechanisms should be made available when necessary.

- ❖ The right to call and examine witnesses;
- ❖ The right to an interpreter at the hearing (at the Athlete or other Person's own expense¹⁵⁰);
- ❖ The Hearing Process shall be conducted within a reasonable time; and¹⁵¹
- ❖ The right for the Athlete or other Person to request a public hearing (with the same right being provided to the RMA, as long as the Athlete or other Person has given their consent to the same).

These points are discussed in more detail below.

Hearing Formats

It is not a Code requirement that a hearing should take place in person, although this is the format most often used.

Circumstances may dictate that hearings take place remotely, that is, by the participants joining together using technology (e.g. when the Athlete or other Person lives several hundred kilometers away, or when the different parties and members of the hearing body are in different countries, or when pandemic-related restrictions are in place). To that end, there are no restrictions as to the technology that can or should be used, but include means such as conference calling, video conferencing technology or other online communication tools.

Lastly, in some circumstances, it may also be fair or necessary to conduct a hearing "in writing," based on written materials without an oral hearing. This might typically be the case in relation to matters where all the facts are agreed, and the only issue is the appropriate Consequences or when the Parties agree to have the issue resolved based on papers only.

2.1. Fair, impartial and operationally independent hearing panel

Operational Independence¹⁵²

On the basis of the definition of Operational Independence as found in the Code, board members, staff members, commission members, consultants and officials of the RMA or any of its affiliates (i.e. any

¹⁵⁰ Domestic rules may also require that such expense be covered by the ADO with Results Management responsibility.

¹⁵¹ The ISRM requires that all decisions be issued and notified promptly after the hearing in person or, if no hearing in person is requested, after the parties have filed their written submissions. Save in complex matters, this timeframe should not exceed two months.

¹⁵² Requirements set forth in Code article 20.5.1 related to the independence of NADOs "in their operational decisions and activities" are of different nature and shall be distinguished from the definition of "Operational Independence" of hearing bodies.

member federation or confederation), as well as any Person involved in the investigation and pre-adjudication of the matter cannot be appointed as members and/or clerks of the RMA's hearing panel.

- ❖ Notwithstanding its objective, which aims to ensure that persons involved in the investigation or pre-adjudication of a case only cannot serve as a clerk¹⁵³ or a panel member, this definition captures a wider group of persons connected with the RMA i.e. members of the ADO with Results Management responsibility and those affiliated with it).
- ❖ The rationale supporting this definition is to strengthen the appearance of justice and to ensure that members of hearing bodies cannot be seen by the accused persons as being under the influence of the ADO with Results Management responsibility and/or having a vested interest in it.
- ❖ Administrative support (e.g. travels, accommodation, catering, copy of files) and payment of costs may be provided by the RMA under certain conditions (i.e. the budget allocated to the first instance hearing body must be a line item in the RMA's budget, with legal safeguards in place, such as fixed amounts set in the law and/or the anti-doping rules and automatic payment).¹⁵⁴

Pool of Hearing Panel Members

ADOs shall establish a pool of hearing panel members from whom individual members can be nominated for specific cases.

- ❖ The number of potential hearing panel members shall be sufficient to ensure that hearing processes are conducted in a timely manner and that it is possible to replace panel members in the case of a conflict of interest.
- ❖ The size of the pool may also vary depending on the number of cases handled annually by the RMA.

The pool may be appointed by the ADO, or can be provided by a specialist dispute resolution service provider¹⁵⁵ or the CAS Anti-Doping Division.

- ❖ Where the pool is appointed by the RMA, it is recommended that an independent nomination committee is put in place, to which it delegates the responsibility for reviewing applications and appointing pool members.

¹⁵³ To the extent that such clerk is involved in the deliberation process and/or drafting of decisions.

¹⁵⁴ Whereas it must be outsourced at the appeal level, see Chapter 9 of these Guidelines.

¹⁵⁵ For example, the American Arbitration Association, Sport Resolution in the United Kingdom or the Sport Dispute Resolution Centre of Canada.

- ❖ Once constituted, the pool must operate independently and legal safeguards be put in place and enshrined in the RMA's anti-doping regulations, in particular:
 - ❖ No early dismissal possible, unless there are objective grounds (see below);
 - ❖ Members cannot take any instructions from any organizations and parties;
 - ❖ Policy on conflict of interests (including signing a declaration upon nomination as a pool member and appointment on a specific case);
 - ❖ The RMA cannot appoint members of the first instance hearing body in a specific case (except when appointment of one of the three members of an arbitral tribunal is required). Such decision must be within the authority of an independent person or body (e.g. the Chairperson of the hearing panel, or an external person).

Members of hearing panel pools must have anti-doping experience, and may include individuals with legal, sport, medical and/or scientific expertise.

- ❖ For instance, subject to general conflict of interest provisions, the following individuals may be appointed as members of hearing bodies of the RMA:
 - ❖ Members of another ADO, provided that they have a good command of the working language of the proceedings;
 - ❖ Members of hearing bodies of another RMA;
- ❖ Further, members of the first instance hearing body and appeal body may be selected from the same (larger) pool of individuals, provided, however, that:
 - ❖ In this situation, the RMA cannot be involved in the nomination and/or appointment of pool members¹⁵⁶; and
 - ❖ The same member is prevented from sitting in both instances on the same case.

Appointment to the pool shall be for terms of no less than two years, which may be renewed.

- ❖ During his/her term, a member of the pool shall not be removed from his/her position, unless there is an objective and/or overriding legal reason (e.g. legal inability, involvement in doping and/or criminal activities, violation of his duties as a member

¹⁵⁶ See Code definition of Institutional independence which prevents the RMA from being involved in the nomination and the appointment of pool members at the appeal level.

of the pool and/or panel such as a breach of confidentiality or an intentional non-disclosure of a conflict of interest).

- ❖ However, a pool member may resign at any time from his/her position due to personal and/or professional reasons (e.g. the member is no longer available to perform his/her duties or is now involved in the ADO's activities, management or governance).

Lastly, training of pool members may be provided by the RMA, ideally together with external persons (including WADA).

- ❖ When providing these training sessions, the RMA should refrain from expressing its view on the proper interpretation of the rules or comment on the correctness or otherwise of decisions.
- ❖ The RMA's interventions should be limited to presenting the underlying mechanisms of the rules as well as the key aspects of the jurisprudence in the most neutral possible way.

Constitution of a Hearing Panel in a Specific Case

The usual constitution of a hearing panel is that it takes the form of a tribunal, with three members, although in simple cases a hearing panel comprised of one person may be sufficient if all the parties agree or if provided for in the procedural rules of the hearing panel¹⁵⁷.

One member of the hearing panel should be appointed as 'the Chairperson'.

- ❖ The Chairperson has no formal responsibilities but will be the person who leads the hearing, by, for example, telling the parties how the hearing panel would like the hearing conducted, which evidence should be presented in which order, and what issues the hearing panel feels it needs to consider.
- ❖ It is highly recommended that the Chairperson has a legal background, although this is not required by the Code or the ISRM.
- ❖ For instance, it might not be necessary for the Chairperson to have a legal background if an ad hoc legal advisor with expertise in anti-doping matters is appointed to assist the hearing panel with any legal issues that arise in relation to the relevant anti-doping rules (e.g. the length of sanction that can be imposed in relation to a particular ADRV).

The other members of the hearing panel should provide a collective expertise in relevant fields, such as legal (in the event the Chairperson does not have a legal background), science, medicine or sport, and

¹⁵⁷ In such case, the single adjudicator shall have a legal background as per Comment to ISRM Article 8.3.

must have anti-doping experience. The intention is that a hearing panel has as broad a cross-section as is available in terms of experience, skills and background.

- ❖ For example, if a claim is made by an Athlete that a certain Prohibited Substance was used Out-of-Competition, rather than In-Competition, a hearing panel member with a science background will be helpful so that any pharmacokinetic arguments or evidence can be assessed.
- ❖ It is also particularly helpful for retired Athletes or Athlete Support Personnel to be members of hearing panels (there is no formal bar on competing Athletes or Athlete Support Personnel being members of hearing panels, but such an appointment would need to be made sensitively and these Athletes will be subject to general conflict of interest provisions).

Fair and Impartial Hearing

A hearing panel must approach all disputes without having made any determination as to the outcome. This requires each member of a hearing panel to be 'impartial'.

- ❖ Members of a hearing panel should not have any formal role in the governance of the organization whose anti-doping rules the Athlete or other Person is charged with breaching. Such a Person will risk being put in a position of conflict of interest if, for example, the outcome of a hearing will reflect positively or negatively on the organization. Indeed, it will be difficult for such a Person to avoid the appearance of being in a position of conflict, which is, for practical purposes, the same as an actual conflict.³⁸
- ❖ In any event, the Athlete or other Person must have an opportunity to challenge the appointment of any member if there is a cause to do so.¹⁵⁸

Hearing panels must also be in a position to conduct the hearing and decision-making process without any interference of the RMA, the Athlete or other Person or any other third party.

The hearing panel should operate according to clear hearing procedures, which must be available to the parties, and which must guarantee the Operational Independence of the hearing panel members. The hearing panel should have some degree of discretion so that it can adapt those procedures to the particular case before it.

- ❖ For example, if the Athlete or other Person is not represented by legal counsel (either by choice or lack of resources and legal aid mechanism available), the hearing body

¹⁵⁸ See Article 6.1.1 above.

may have to be more flexible and take a more active role in the questioning to ensure that the hearing is fair.

Once the composition of a hearing panel is determined (which can and should take place early in the course of the disciplinary proceedings), the hearing panel will hear the charge by reference to the evidence submitted by the parties

2.2. Opening a hearing

Anti-doping hearings are intended to be informal in terms of matters such as presentation of evidence and submissions, and so there are no set formats for how a hearing should proceed. However, it is helpful if hearings follow the same basic model, which includes the Chairperson:

- i) Welcoming those present, and introducing him/herself and the members of the hearing panel;
- ii) Explaining the purpose of the hearing, and asking the parties (and their representatives and witnesses) to identify themselves;
- iii) Inviting witnesses (where not a party to the case) to wait in another room until they give their evidence. It is important that the witnesses stay in another room if they are giving evidence of facts, where the facts are disputed. Further, where hearings are conducted by electronic means (i.e., by videoconference or teleconference), witnesses should not join the videoconference or teleconference until they are required for their testimony;
- iv) Asking the parties if there are any preliminary issues that need to be addressed before the hearing proceeds;
- v) Asking the parties to make a brief statement on their positions in the case.

2.3. Hearing evidence

A fundamental precept of all anti-doping proceedings is that the ADO which has charged the Athlete or other Person with committing an ADRV must prove that the ADRV was committed. The Athlete or other Person does not have to prove that they did not commit the ADRV.

This means that the ADO must present its evidence to a hearing panel and demonstrate that that evidence shows that the ADRV was committed. As explained above, this evidence should be shared with the Athlete or other Person before the hearing takes place. This is so that the Athlete or other Person:

- i) Understands the case that is being made against them;
- ii) Can investigate the evidence that has been prepared by the ADO against them; and

iii) Can prepare their own evidence in response.¹⁵⁹

Evidence may include testimony (i.e., oral or written statements from witnesses, including expert witnesses) or documentary or other evidence (i.e., video or audio recordings), or a combination thereof.

The same principles should apply to evidence relied upon by an Athlete or other Person. Hearing panels will, however, recognize that it is frequently the case that an Athlete or other Person will not have the resources and access to specialist advice that an ADO has. There will therefore be a greater degree of informality about how an Athlete or other Person provides their evidence.¹⁶⁰

Both parties must be allowed to question, or 'cross-examine', any witness who provides evidence at a hearing. This provides both parties with the opportunity to ask questions about all aspects of the evidence. It is also an opportunity for the members of the hearing panel to ask witnesses questions.

It is essential that the Athlete or other Person understands the evidence that is being relied upon by the ADO. This might, in certain cases, raise practical issues such as translation, or preparation time. To the extent possible, the ADO should make sure that all necessary evidence is made available to an Athlete or other Person in the language that they are most comfortable with. It should also allow that Person sufficient time to examine the evidence and make any enquiries or investigations they need to make. These are matters that should be managed by the Chairperson of the hearing panel in the pre-hearing phase.

In general, it is for the hearing panel to determine what weight should be given to any particular evidence tendered by the parties.

Before hearing closing arguments, the hearing panel must have provided both the ADO and the Athlete or other Person with the opportunity to: (a) have presented all the evidence they want to rely on to the hearing panel; and (b) ask questions to the witnesses who have put forward that evidence.

2.4. Closing a hearing

Once the hearing of the evidence concludes, the Chairperson should invite the ADO and the Athlete or other Person to summarize their respective positions in a closing statement.

During the course of the closing statement, each party may wish to make submissions about legal points that arise in relation to the case. These should be made by reference to:

¹⁵⁹ Please refer to the Code definition of Strict Liability and to Code article 3 where rules relating to burdens and standards of proof are detailed.

¹⁶⁰ Indeed, if an Athlete or Athlete Support Person simply wishes to attend a hearing and present his/her evidence then, that should be allowed.

- i) The summary of the legal position that the party is taking, as detailed in the pre-hearing phase; and
- ii) How (if at all) that position has been modified by the evidence presented to the hearing panel.

In any case, the parties should make reference to the relevant anti-doping rules and any relevant case law and how they apply to the facts established by the evidence (in particular to support any reduction of the sanction being sought). The Athlete or other Person should have the ‘last say’ to close the hearing.

The hearing panel should ask the parties whether they are satisfied with the conduct of the hearing and otherwise, whether they have any claim to make against the regularity of the proceedings.

3. Event hearings

Event hearings take place during the course of an Event, such as a major Event where the MEO conducts a Sample Collection Session (Code Article 8.2). The Samples are analyzed within a timeframe that may result in an AAF being reported during the Event Period. If this happens, and if an ADRV is confirmed, the MEO will want to take action to Disqualify the Athlete’s results in accordance with its anti-doping rules and remove the Athlete from its Event.¹⁶¹

Code Article 7.1.4 requires MEOs to assume Results Management responsibility to at least the limited extent of conducting a hearing to determine whether an ADRV was committed and, if so, to determine the appropriate and applicable Disqualifications under Code Articles 9 and 10.1 and, where applicable, Code Article 11.¹⁶²

This will usually, but not always, require a hearing. For AAFs, if the “B” Sample analysis confirms the “A” Sample finding (or if the “B” Sample analysis is waived), an ADRV will be established and, if the Sample was collected In-Competition, it will lead to the automatic Disqualification of the Athlete’s results according to Code Article 9 and may lead to further Disqualification of the Athlete’s results pursuant to Code Article 10.1 or, where applicable, the Athlete or their team’s results in accordance with Code Article 11.¹⁶³ In such

¹⁶¹ The most obvious example of this scenario is the Olympic Games. The IOC requires Athletes to provide Samples during the Olympic Games, and if a Sample results in an AAF, then the Athlete is excluded from the Olympic Games. This system is the same for all MEOs.

¹⁶² It should be noted that reference is made in these Guidelines to the relevant Code articles; however, in practice, the relevant and applicable articles will be those found in the MEO’s Anti-Doping Rules.

¹⁶³ Ibid

circumstances, it is unnecessary to hold a hearing to determine whether an ADRV was committed, unless the Athlete considers that there are grounds to challenge the validity of the AAF.¹⁶⁴

If a hearing during the Event is required, it may be conducted on an ‘expedited’ basis, as permitted by the rules of the MEO and the hearing panel. This means that the hearing will take place very soon after an Athlete or other Person is charged with committing an ADRV. This is in the interests of both the MEO (it needs results to be revised quickly and Competition schedules to be amended if an Athlete is not eligible to compete) and the Athlete or other Person (both of whom will want the matter resolved quickly so that they can resume participation).

There are no special rules regarding expedited hearings; however, they must nevertheless be fair and be conducted before a fair, impartial and Operationally Independent hearing panel.¹⁶⁵

It should be noted that, if the MEO only conducts a limited hearing (i.e., to determine whether an ADRV was committed and, if so, the appropriate and applicable Disqualifications), the MEO must refer the case to the relevant IF for completion of Results Management pursuant to Code Article 7.1.4 without delay. Moreover the MEO should keep the IF abreast of the progress of the case (by copying the IF to all correspondence for example).

4. Waiver of hearing

Often there is no dispute between an ADO and an Athlete or other Person regarding an ADRV charge, notably in Code Article 2.1 (Presence) cases. The Athlete or other Person may admit the wrongdoing and accept the ADO’s case regarding the Consequences to be imposed. In such situations, there is no need for a hearing to be conducted as there is no dispute to resolve.

If this is the case, the relevant anti-doping rules might make provision for the matter to be resolved without a hearing, for example, by the parties agreeing that an ADRV has been committed and the Athlete or other Person accepting the Consequences. But as Sections 6.2.2 and 6.2.3 below note, such resolutions require a “reasoned decision” for the ADOs with a right of appeal and the Athlete to understand the outcome.

In particular, if an ADO has applied the provisions in Code Article 10 that allow for the imposition of a reduced sanction, it should explain how these have been applied on the basis of the facts and any rules-

¹⁶⁴ Even in such cases, a hearing during the Event is likely to be impractical as such a challenge typically requires the Athlete to retain scientific and legal experts, which is often a process that will take more time than that which is remaining in the Event. In those instances, a hearing could be held after the event subject to the imposition of a provisional suspension (if applicable) and any necessary event-related measures (e.g. removal from the event).

¹⁶⁵ In addition to satisfying the requirements found in Article 8 of the Code and the ISRM.

based or other legal justifications, including, where applicable, reference to similar cases decided by anti-doping disciplinary tribunals.

Special consideration should be given to the recording of decisions whereby a suspension of part of the Consequences is agreed based on Substantial Assistance.¹⁶⁶

NOTE ABOUT SINGLE CAS HEARINGS

Code Article 8.5 contains a provision that allows an ADO and an International- or National-Level Athlete or other Person to have an ADRV matter determined by the CAS at a single hearing. This may only be done with the consent of the Athlete or other Person, the ADO with Results Management responsibility, and WADA.

Clarification

Delegation by an ADO of its responsibilities under Code Article 8 (i.e. fair hearings) to the CAS ADD does not constitute the single hearing before CAS for the purpose of Code Article 8.5.

This is a different way of approaching such hearings (CAS is usually engaged to resolve appeal hearings). The advantage lies in the potential cost savings, especially if the nature of the case is such that the need for ultimate resolution by the CAS is clear.¹⁶⁷

¹⁶⁶ At a minimum, the decision should discuss the two main criteria for Substantial Assistance, i.e. “the seriousness of the anti-doping rule violation committed by the Athlete or other Person and the significance of the Substantial Assistance provided by the Athlete or other Person to the effort to eliminate doping in sport, non-compliance with the Code and/or sport integrity violations”.

¹⁶⁷ This approach avoids the combined costs of holding a hearing in first instance, and then rehearing the entire case before the CAS. It may also ensure that a final decision is rendered promptly, which may be of interest to all parties. Additionally, in complex cases (e.g. ABP cases), the first instance panel may not have the required level of expertise to properly assess the asserted ADRV.

CHAPTER 8:

What to include in a decision

RESULTS MANAGEMENT BASICS

SECTION 1



PRE-HEARING PHASE

SECTION 2



ADJUDICATION PROCESS

SECTION 3



SECTION 4 SUBSTANTIAL ASSISTANCE

1. Respecting the timing

The Hearing Process shall be conducted as soon as possible after the notification of the asserted ADRV to the Athlete or other Person. Once a decision has been taken by the hearing panel in charge of the case, the RMA shall ensure that, shortly after the hearing, a complete and reasoned decision is notified to the parties with a right of appeal under Code Article 13.2.3 as provided in Code Article 14.2.1 on a timely basis.

Any delay in the Results Management process is potentially harmful to sport and the fight against doping and may lead WADA to refer the case directly to CAS at the RMA's expense (Code Article 13.3) or to an

allegation of non-compliance and the imposition of consequences against the Signatory for failure to comply with the Code and/or the International Standards (Code Article 24).

2. Drafting the decisions

2.1. Content

Results Management decisions or adjudications by ADOs must not purport to be limited to a particular geographic area or sport, and must address all of the issues listed in Code Article 7.5.1.

Pursuant to Code Articles 8 and 14, all decisions must be recorded in writing and include the full reasons for the decision, including, if applicable, a justification for why the maximum potential sanction was not imposed. This obligation is also applicable when the Athlete or other Person waives their right to a hearing and accepts the Consequences sought by the RMA.

A reasoned decision is necessary to allow the parties with a right of appeal to review the decision in an appropriate fashion.

The following information must be included in Results Management decisions or adjudications by ADOs pursuant to ISRM Article 9.1.1:

a) Jurisdictional basis and applicable rules

The first question to address is jurisdiction and the applicable rules. The hearing panel or ADO in charge of the case shall ensure that it has jurisdiction to deal with the case on the basis of the applicable rules and it shall indicate which anti-doping rules apply in the decision.

b) Detailed factual background

In this section of the decision, the chronology of the case should be presented. If the case is based on an AAF, the date and place of the Sample Collection Session, the type of Sample (blood or urine), whether the Sample was collected In-Competition or Out-of-Competition, etc. shall be indicated, as well as the Laboratory which conducted the analysis, the date of the analytical result and the Prohibited Substance(s) detected. If a "B" Sample analysis was requested and performed, this shall also appear in this section of the decision. If the case is non-analytical, a full and detailed description of the facts which led to the instigation of proceedings by the RMA shall be provided.

c) ADRV(s) committed

In this section, the hearing panel's consideration as regards the establishment of the ADRV(s) shall be presented. In case of an AAF, the hearing panel shall confirm that the

Prohibited Substance detected is a Prohibited Substance, that there was no departure from the International Standards, and whether the alleged departure(s) did or did not cause the AAF.

If the case is non-analytical, the hearing panel shall, in this section, assess the evidence presented and explain why it considers that the evidence presented by the RMA meets or does not meet the required standard of proof to establish that an ADRV had occurred. In case the hearing panel considers that the ADRV is established, it shall expressly indicate the Anti-Doping Rule(s) violated.

d) Applicable Consequences

The decision shall then address the issue of the applicable sanction or regime of sanction for the ADRV in question (alone or in combination with others) and then consider whether or not there are circumstances which could justify a reduction, a suspension or an increase in the sanction, and if so, provide the reasons for the sanction ultimately imposed. Sanction imposed from within a range must be explicitly justified (e.g. in cases of Specified Substances or Contaminated Products: Code Articles 10.6.1.1 or 10.6.1.2).

Once the sanction has been set, the hearing panel shall indicate the date on which the period of Ineligibility starts (Code Article 10.13.1). If the start date is not the decision date, this shall be explained.

The hearing panel is also required to indicate the relevant period of disqualification of the results in accordance with Code Article 10.10. The decision shall also set out if (and to what extent) any period of Provisional Suspension is credited against any period of Ineligibility ultimately imposed and set out any other relevant Consequences based on the applicable rules, including Financial Consequences.

As per Code Article 7.5.1, Major Event Organizations shall, however, not be required to determine Ineligibility or Financial Consequences beyond the scope of their Event. A Results Management decision or adjudication by a Major Event Organization in connection with one of its Events may be limited in its scope but shall address and determine, at a minimum, the following issues:

- a) Whether an ADRV was committed, the factual basis for such determination, and the specific Code Articles violated, and
- b) Applicable Disqualifications under Code Article 9 and, if and where applicable, Code Articles 10.1 and 11, with any resulting forfeiture of medals, points and prizes.

A mandatory part of each sanction shall include automatic publication, except in the case of a Minor, Protected Person or Recreational Athlete (Guidelines Section 6.2.5). Any optional Public Disclosure in a case involving a Minor, Protected Person or Recreational

Athlete must be proportionate to the facts and circumstances of the case (Code Article 14.3.7).

e) Appeal routes and deadline to appeal for the Athlete or other Person

Last but not least, the decision shall indicate the possible appeal routes indicated under the applicable anti-doping rules, taking into consideration whether the Athlete is an International-Level Athlete, or whether the matter involves an International Event, and the deadline to proceed.

REMINDER

ACCEPTANCE FORM/WAIVER OF HEARING

As mentioned above, a reasoned decision is still required even when the Athlete or other Person waives their right to a hearing, admits an ADRV and accepts the Consequences sought by the RMA (Code Article 8.4).

3. Notifying decisions to relevant parties

The reasoned decision shall be notified by the RMA without delay to the Athlete or other Person as well as to any party with a right of appeal under Code Article 13.2.3¹⁶⁸.

As WADA has a right to appeal all decisions under Code Article 13.2.3, the RMA must provide WADA with the reasoned decision in each case pursuant to Code Article 8.4. As per Code Article 14.5.3, the reasoned decision shall be reported in ADAMS and may also be sent to WADA by email to rm@wada-ama.org.

¹⁶⁸ Code Article 8.4; ISRM Article 9.2.1.



GUIDANCE

Where decisions are not in English or French, ADOs must provide¹⁶⁹:

- ❖ A searchable version of the decision¹⁷⁰, i.e. a version in a format allowing to copy and paste the content of the document;
- ❖ An English or French summary that contains the following information: the Athlete's or other Person's name, the date and factual details relating to the ADRV, the Athlete's or other Person's explanations and main arguments, and the supporting reasons for the decision, including Consequences if applicable.

ADOs are strongly encouraged to provide the full case file pertaining to a decision only upon written request of an ADO having a right to appeal (see Code Article 14.2.2). The full case file:

- ❖ Shall be provided promptly and ideally within two (2) weeks upon receipt of the request in writing;
- ❖ Should be sent by using an encrypted and secure system (e.g. a Sharefile-type sharing platform set up by the ADO, encrypted emails) in an organized manner with a table of contents¹⁷¹. WADA can provide a secure link to ADOs to share the case file in a protected manner;
- ❖ A searchable version of the documents should be provided;
- ❖ When documents are not in English or French, a short description of each document should be provided in one of these two languages.

4. Publicly disclosing the decisions

4.1. Principles

Save in limited circumstances, a mandatory part of each sanction shall include automatic Public Disclosure as provided in Code Article 14.3.2. Within 20 days after a final appellate decision, or after an appeal or hearing has been waived, or the assertion of an ADRV has not been challenged in a timely manner, or if the matter has been resolved pursuant to Code Article 10.8, or a new period of Ineligibility, or reprimand, has been imposed under Code Article 10.14.3, the following information shall be made public by the RMA:¹⁷²

- ❖ The Athlete or other Person's name;

¹⁶⁹ See Code article 14.2.1.

¹⁷⁰ See ISRM Article 9.2.1.

¹⁷¹ See ISRM Comment to Article 9.2.4.

¹⁷² Although not required by the Code or the ISRM, ADOs may consider referring on their website to ongoing period of Ineligibilities imposed by other ADOs on Athletes or other Persons (e.g. a NADO may decide to publish on its website period of ineligibilities imposed on nationals of their country by an IF or another NADO).

- ❖ The sport;
- ❖ The Anti-Doping Rule violated and the Prohibited Substance or Prohibited Method involved, if applicable; and
- ❖ The Consequences (sanction).

At a minimum, this information shall be posted on the responsible RMA's website for the longer of one month or the duration of the period of Ineligibility.

The exceptions to the requirement for mandatory Public Disclosure are where the Athlete or other Person who has been found to have committed an ADRV is a Minor, Protected Person or Recreational Athlete (Code Article 14.3.7). Any optional publication in such cases shall be proportionate to the facts and circumstances of the case.¹⁷³

It should also be noted that, pursuant to Code Article 14.3.3, when it has been determined that an ADRV has been committed in an appellate or hearing decision, or an appeal or hearing has been waived, or the assertion of an ADRV has not been challenged in a timely manner, or the matter has been resolved pursuant to Code Article 10.8, the RMA may make such a determination public and may also publicly comment on the matter.

4.2. Privacy and Data protection Considerations related to Publication

The RMA making any Public Disclosure should consider the fact that the publication will necessarily impact the privacy interests of the relevant Athlete or other Person, and must comply with applicable data protection and privacy laws and the International Standard for the Protection of Privacy and Personal Information (ISPPPI) in this context.

Whether Public Disclosure is mandatory or optional under the Code, its purpose is to serve the interests of clean sport by deterring doping and alerting the sport and anti-doping communities to individuals that have engaged in doping practices.

¹⁷³ WADA may also agree to no mandatory Public Disclosure where an Athlete or other Person has provided Substantial Assistance pursuant to Code Article 10.7.1.2

Mandatory Public Disclosure

Public Disclosure is mandatory when an anti-doping rule violation decision is final and the subject of the decision is not a Minor, Protected Person or Recreational Athlete.¹⁷⁴

Mandatory Public Disclosure requires that RMAs publish the disposition of the anti-doping matter including the sport, the anti-doping rule violated, the name of the Athlete or other Person committing the violation, the Prohibited Substance or Prohibited Method involved (if any) and the Consequences imposed, for a minimum publication period as described in Section 6.2.5.1 above.

Optional Public Disclosure

Optional Public Disclosure encompasses the following scenarios:

- ❖ Early Public Disclosure as described in Code Article 14.3.1;
- ❖ Public Disclosure where the subject of the decision is a Minor, Protected Person, or Recreational Athlete as described in Code Article 14.3.7;
- ❖ Publication of details beyond the minimum information required by the Code;¹⁷⁵
- ❖ Continued Public Disclosure after the minimum publication period under the Code has expired.

Considering the ISPPPI requirement to only Process Personal Information where necessary to carry out Anti-Doping Activities, RMAs will be expected to assess the proportionality of any optional Public Disclosure, taking into account the important anti-doping purposes it serves as well as the privacy and other interests of the Athlete or other Person. RMAs will also be expected to respond promptly to the exercise of any rights by Athletes or other Persons under Article 11.4 of the ISPPPI and applicable data protection and privacy laws.

When evaluating the proportionality of the optional Public Disclosure, RMAs should consider:

- ❖ The dissuasive effect of the Public Disclosure on the future conduct of the relevant Athlete or Person, as well as other Athletes and Persons;
- ❖ The informative or precedential value that the Public Disclosure may have for Athletes and other Persons in relation to Code compliance;

¹⁷⁴ The only exception to mandatory Public Disclosure is where doing so would cause the RMA to breach other applicable laws. An RMA asserting this exception must be prepared to justify this assertion to the satisfaction of WADA's Code Compliance Taskforce (e.g. by providing evidence of the specific legal provision that prohibits Public Disclosure, or by demonstrating how Public Disclosure in a particular case fails a mandatory proportionality analysis under applicable law).

¹⁷⁵ See Code Article 14.3.3.

- ❖ The extent to which Public Disclosure of details beyond the minimum required by the Code reveals Personal Information or other confidential information about an individual that is not the subject of the decision;
- ❖ The relevant Athlete or other Person's public notoriety and status under the Code, in particular whether they are a Minor, Protected Person or Recreational Athlete;
- ❖ The extent to which the Public Disclosure relates to matters already in the public domain or that are widely known;
- ❖ The risk that the Public Disclosure will remain online via other sources even after the RMA has removed it from its website; and
- ❖ Any clear evidence to suggest that the relevant Athlete or other Person may experience exceptional privacy, reputational or other harms or, conversely, to suggest that Public Disclosure would be particularly appropriate in the circumstances.

RECOMMENDATION

Considering the privacy and other interests impacted by Public Disclosure, to the extent RMAs wish to keep a repository of their decisions available online for their informative and precedential value after the minimum disclosure period has expired, RMAs should consider redacting these decisions to anonymize them.

5. Following the decisions – the RMA's responsibilities

Code Signatories, in particular IFs and NADOs, shall take appropriate action to ensure proper enforcement of the Consequences of ADRVs within their sphere of competence.¹⁷⁶

The RMA shall inform Athletes and other Persons subject to a period of Ineligibility of their status during Ineligibility. This includes providing information regarding the Consequences of a violation of the prohibition of participation during Ineligibility.

The RMA should also inform the Athlete or other Person that they may still provide Substantial Assistance at any time.

In the event an ADO with a right to appeal requests a copy of the full case file pertaining to a decision, the RMA must promptly provide it.

¹⁷⁶ Code Articles 20.3.12 and 20.5.7.

Lastly, if the case involves an AAF or ATF, the RMA shall notify the Laboratory once the deadline to appeal has lapsed and no appeal has been filed.

5.1. Prohibition against participation

ADOs shall ensure that the sanctions pronounced are duly respected, and that no Athlete or other Person sanctioned for an ADRV takes part in any sport, in any manner whatsoever, during their period of Ineligibility or Provisional Suspension. Any breach of the prohibition against participation during Ineligibility or a Provisional Suspension shall be immediately prosecuted in accordance with Code Article 10.14.3. The Results Management of any suspected violation of Code Article 10.14.1 shall comply with the principles of the ISRM, mutatis mutandis.

This prohibition is quite extensive, as the Athlete or other Person serving a period of Ineligibility or a Provisional Suspension cannot take part in the sport in any capacity. It means, for example, that a suspended Athlete cannot perform any function in a national association or member club, even including administrative or managerial functions.

Any additional period of Ineligibility for violating the prohibition against participation shall be added to the end of the Athlete or other Person's original period of Ineligibility. If as a result of this violation the Athlete or other Person was also charged with an ADRV, the period of Ineligibility as a result of the ADRV shall commence on the first day after the additional period of Ineligibility for the violation of prohibition against participation has been served.

5.2. Availability for Testing

An Athlete subject to a period of Ineligibility shall be made aware by the responsible ADO that they shall remain subject to Testing during the period of Ineligibility¹⁷⁷.

If an Athlete retires from sport while subject to a period of Ineligibility and then wishes to return to active competition in sport, they may not do so until they have made themselves available for Testing by giving their IF and NADO six months prior written notice (or, if longer, notice equivalent to the period of Ineligibility remaining as of the date the Athlete retired). This requirement should be expressly explained to the Athlete when the latter informs the ADO that he/she is retiring.¹⁷⁸

¹⁷⁷ Code Article 10.14.1. Not every Athlete serving a period of Ineligibility will be required to provide a Sample during this period. Responsible ADOs will exercise their discretion according to the circumstances. However, Athletes who are required to provide a Sample must provide whereabouts information.

¹⁷⁸ Code Article 5.6.2.

5.3. Return to training

An Athlete may return to train with a team or use the facilities of a club before the end of his/her period of Ineligibility under the conditions described in Code Article 10.14.2.¹⁷⁹

5.4. Implementation of decisions – automatic binding effect of decisions by Signatory Anti-Doping Organizations

Code Article 15 renders any decision made by a Signatory ADO, an appellate body or CAS automatically binding upon every Signatory in every sport.¹⁸⁰ This includes Provisional Suspension decisions, decisions imposing a period of Ineligibility, decisions accepting an ADRV, and decisions to Disqualify results.

Every Signatory must recognize and implement a decision and its effects, without any further action required.¹⁸¹ This also applies to decisions to suspend or lift Consequences¹⁸² or other decisions of ADOs not described in Code Article 15.1.1.¹⁸³ If a Signatory with the right to appeal finds a decision to be non-compliant with the Code, its only recourse to not implementing and recognizing it would be to appeal. The decision on appeal then must be recognized and implemented in accordance with Code Article 15. Should an ADO refuse to recognize and implement a decision in accordance with Code Article 15, this could result in the ADO being declared non-compliant in accordance with the ISCCS.

However, it should be noted that decisions of MEOs in an expedited process during an Event are not binding on other Signatories unless the Athlete or other Person has an opportunity to appeal under non-expedited procedures.¹⁸⁴

Signatories shall also implement anti-doping decisions by bodies that are not Signatories to the Code in accordance with the conditions specified in Code Article 15.3.

5.5. Transitional provisions

The 2021 Code applies in full from 1 January 2021 and is not of retroactive effect save in the circumstances described in Code Article 27.2 concerning the application of the “lex mitior” principle and procedural rules (e.g. the procedural rules relating to multiple violations and the statute of limitations).

¹⁷⁹ Code Article 10.14.2 is applicable to Athletes or other Persons who become eligible to these provisions whilst their appeal against the decision imposing on them a period of ineligibility remains pending before the appellate hearing body.

¹⁸⁰ The automatic binding effect takes force after the parties to the proceedings are notified of the decision. Please see Code Article 15.1.1.

¹⁸¹ This takes place on the earlier of the date that the Signatory receives actual notification of the decision or the date the decision is placed in ADAMS, see Code Article 15.1.2.

¹⁸² Code Article 15.1.3.

¹⁸³ Code Article 15.2.

¹⁸⁴ Code Article 15.1.4.

Code Article 27.3 allows an ADO which had Results Management responsibility to consider a reduction in the period of Ineligibility in light of the 2021 Code in cases where a period of Ineligibility has been accepted or otherwise imposed under anti-doping rules adopted pursuant to a prior version of the Code.

In order for Code Article 27.3 to apply:

- ❖ The Athlete or other Person must make an application to the ADO which had Results Management responsibility for the anti-doping rule violation seeking a reduction in the period of Ineligibility; and

The application must be made before the period of Ineligibility being served by the Athlete or other Person has expired.

After an ADO Results Management responsibility considers such an application, it must render a reasoned decision which may be appealed pursuant to Code Article 13.2.

EXAMPLES

An Athlete committed an ADRV in 2018. At the time of notification of the violation, he/she admitted the violation and accepted the asserted period of ineligibility no later than twenty days after receiving notice of the anti-doping rule violation charge and was issued with a decision prior to 1 January 2021 by which he/she received a four-year period of Ineligibility. After 1 January 2021, but before his period of ineligibility expires, the Athlete may apply to the ADO which had results management authority for the ADRV and request a reduction in the period of ineligibility in accordance with the Code Articles 10.8.1 (One-Year Reduction for Certain Anti-Doping Rule Violations Based on Early Admission and Acceptance of Sanction) and 27.3.

An Athlete tested positive for cocaine in 2020 and established that his/her use occurred two days before the sample collection in a context unrelated to sport competition (e.g. during a party). A two-year period of ineligibility was imposed on him/her prior to 1 January 2021. After 1 January 2021, but before his/her period of ineligibility expires, the Athlete may apply to the ADO which had results management authority for the ADRV and request that his/her period of ineligibility be reduced down to three months – or even down to one month if he/she satisfactorily completes a Substance of Abuse treatment program approved by the ADO with Results Management responsibility – in accordance with the Code Articles 10.2.4 (Substance of Abuse) and 27.3.

Code Article 27.6 provides that changes to the Prohibited List and Technical Documents relating to substances or methods on the Prohibited List shall not, unless they specifically provide otherwise, be applied retroactively.

However, when a Prohibited Substance or Prohibited Method has been removed from the Prohibited List, an Athlete or other Person currently serving a period of Ineligibility on account of the formerly Prohibited Substance or Prohibited Method may apply to the ADO¹⁸⁵ which had Results Management responsibility for the anti-doping rule violation to consider a reduction in the period of Ineligibility in light of the removal of the substance or method from the Prohibited List.

¹⁸⁵ The matter will be decided by the applicable body pursuant to the ADOs anti-doping rules.

CHAPTER 9

What to know about appeals

RESULTS MANAGEMENT BASICS

SECTION 1

Who is in charge of results management and how

Initial considerations

PRE-HEARING PHASE

SECTION 2

How to review cases

How to impose provisional suspensions

What is in the charge letter

ADJUDICATION PROCESS

SECTION 3

How to enter into results management agreements

How to prepare for hearings

What to include in a decision

What to know about appeals

SECTION 4 SUBSTANTIAL ASSISTANCE

1. Understanding the basics

The majority of decisions rendered under Code-compliant rules may be appealed (Code Article 13.1). See Code Article 13.2 for a detailed list of the types of decisions that may be appealed. Once an appeal has been lodged, the appealed decision remains in effect, unless the appeals body orders otherwise.¹⁸⁶

Depending on the status of the Athlete or other Person, or on the hearing body whose decision is appealed, an appeal is lodged either before the designated appellate body or the CAS.

¹⁸⁶ Code Article 13.1.

For ADOs that have an internal appeals body, an appeal can be lodged before such a body prior appealing to the CAS. Should no other party make an appeal before an existing ADO internal appeals body, WADA has the right to appeal directly to the CAS and has no obligation to exhaust internal remedies.

1.1. Cases of international nature

If a case arises from an International Event or involves an International-Level Athlete, as defined by the relevant IF, the first instance decision may be appealed exclusively before the CAS. The parties with a right of appeal to the CAS are listed in Code Article 13.2.3.1.

Notwithstanding the above, some IFs have their own appeals body and the Athlete or other Person may be required under the applicable IF rules to appeal their case first before this body. As indicated above, WADA is not required to exhaust internal remedies and may appeal directly to the CAS.

1.2. Other cases

If the case is not a case of international nature, the decision may be appealed before the appellate body indicated in the relevant and applicable ADO's anti-doping rules, which shall be fair, impartial and Operationally and Institutionally Independent.

Operational Independence means that:

“board members, staff members, commission members, consultants and officials of the RMA or its affiliates (e.g. member federation or confederation), as well as any person involved in the investigation and pre-adjudication of the matter, cannot be appointed as members and/or clerks (to the extent that such clerk is involved in the deliberation process and/or drafting of any decision) of hearing panels of that RMA; and that hearing panels shall be in a position to conduct the hearing and decision-making process without interference from the Results Management Authority or any third party.”¹⁸⁷

The concept of Institutional Independence is defined in the Code as follows:

“Hearing panels on appeal shall be fully independent institutionally from the Anti-Doping Organization responsible for Results Management. They must therefore not in any way be administered by, connected or subject to the Anti-Doping Organization responsible for Results Management.”

The appointment of appeal panel members and the Hearing Process is also governed by ISRM Article 8, mutatis mutandis.

¹⁸⁷ See definition of Operational Independence in Appendix 1 to the Code and comment to Article 8.6 ISRM.

The procedural rules shall be set out in the responsible ADO's rules. The parties with a right of appeal to the appellate body designated in the ADO's anti-doping rules are listed therein and must, at a minimum, include those described in Code Article 13.2.3.2.

The decision rendered by the appellate body designated in the ADO's anti-doping rules may be appealed further to the CAS but only by the applicable IF, WADA and, where applicable, the IOC or the IPC (Code Article 13.2.3.2).

2. Respecting deadlines

A party's deadline to appeal does not begin running until receipt of the decision (i.e. irrespective or independent of any timescales for comment or proposals for redactions). The deadline to file an appeal is set out in the rules of the applicable RMA.¹⁸⁸

An Anti-Doping Organization having a right to appeal a decision received pursuant to Article 14.2.1 may request a copy of the full case file pertaining to the decision which, depending on the rules of the applicable RMA, may give rise to an extended time limit within which to file an appeal.

In the absence of a time limit set in the applicable RMA's rules, the time limit for appeal before the CAS is 21 days from receipt of the decision appealed against¹⁸⁹.

A specific appeal deadline applies to an appeal by WADA as set out in Code Article 13.2.3.5 which must be incorporated into a Signatory's anti-doping rules without substantive change. The filing deadline for an appeal filed by WADA shall be the later of:

- ❖ 21 days after the last day on which any other party in the case could have appealed, or
- ❖ 21 days after WADA's receipt of the complete file relating to the decision.

3. Notifying relevant parties

3.1. Notice of an Appeal

Any party to an appeal – including before CAS – must ensure that WADA and any other party with a right to appeal have been given timely notice of the appeal as required by the rules¹⁹⁰ so that all parties are kept apprised of the status of cases and may intervene in the proceedings if they see fit.

¹⁸⁸ See comment to Code Article 13.2.3

¹⁸⁹ Code of Sports-related Arbitration and Mediation Rules Article R49 (www.tas-cas.org).

¹⁹⁰ Code Article 13.2.3.3 and Article 10.3 ISRM.

This notice must be given:

- a) In writing:
 - ❖ Emails are recommended;
 - ❖ An ADO may discharge its duty towards WADA by sending an email to WADA Results Management (rm@wada-ama.org).

In a timely manner, i.e. either:

- ❖ Upon filing of an appeal or
- ❖ Upon receipt of a notice of an appeal; and

Simultaneously to all parties with a right to appeal.

3.2. Appeal Decision

Pursuant to Code Articles 13.5 and 14.3, the applicable ADO(s) must:

- a) Notify appeals decisions. It is recommended that such notification be performed the same way as indicated in the section immediately above; and

Publicly Disclose the outcome of the case in accordance with Code Articles 14.3. Where a sanction is imposed, the mandatory information required in Code Article 14.3.2 must be published:

- ❖ Within twenty (20) days;
- ❖ In a section dedicated to anti-doping sanctions that is easily accessible from the homepage of the ADO's website.

4. Appealing to the Court of Arbitration for Sport

The CAS is an arbitration body specialized in sport-related disputes and having its seat in Lausanne, Switzerland. The CAS is the last resort disciplinary body for doping-related matters under the Code. Doping cases may also be referred to the CAS at an earlier stage, e.g. when an ADO fails to hold a hearing or to render a decision (Code Article 13.3), or when all parties and WADA agree to a single hearing before CAS under Code Article 8.5.

All appeals before the CAS take the form of a complete re-hearing of the issues on appeal (i.e. a de novo hearing), and the CAS panel can substitute its decision for the decision subject to the appeal.

CAS decisions are final and binding for all parties involved except for any review required by law applicable to the annulment or enforcement of arbitral awards. The CAS hearing procedure is detailed in the [Code of Sports related Arbitration and Mediation Rules](#).

5. Appealing to the Swiss Federal Tribunal

CAS decisions can be appealed to the Swiss Federal Tribunal. Such an appeal should be filed within 30 days from notification of the CAS decision.

However, the Swiss Federal Tribunal has a scope of review limited to a certain number of grounds such as:¹⁹¹

- ❖ Irregular constitution of the Arbitration Panel;
- ❖ Issue regarding jurisdiction;
- ❖ Violation of key principles and/or of elementary procedural rules (e.g. equal treatment of the parties, right to be heard, violation of the right to a fair hearing etc.); or
- ❖ Incompatibility with public policy¹⁹².

¹⁹¹ Swiss Federal Act on Private International law (PILS) Article 190 (Excerpts): The award is final from the time it's communicated. Proceedings for setting aside the award may only be initiated:

- where the sole arbitrator has been improperly appointed or where the arbitral tribunal has been improperly constituted;
- where the arbitral tribunal has wrongly accepted or denied jurisdiction;
- where the arbitral tribunal has ruled beyond the claims submitted to it, or failed to decide one of the claims;
- where the principle of equal treatment of the parties or their right to be heard in an adversary procedure has not been observed;
- where the award is incompatible with public policy.

For preliminary decisions, setting aside proceedings can only be initiated on the grounds of a and b; the time limit runs from the communication of the decision.

¹⁹² PILS Article 190 (Excerpts): The award is final from the time when it is communicated. Proceedings for setting aside the award may only be initiated: where the sole arbitrator has been improperly appointed or where the arbitral tribunal has been improperly constituted; where the arbitral tribunal has wrongly accepted or denied jurisdiction; where the arbitral tribunal has ruled beyond the claims submitted to it, or failed to decide one of the claims; where the principle of equal treatment of the parties or their right to be heard in an adversary procedure has not been observed; where the award is incompatible with public policy. As regards preliminary decisions, setting aside proceedings can only be initiated on the grounds of the above paragraphs 2(a) and 2(b); the time limit runs from the communication of the decision.

SECTION 4

Substantial assistance

This section will provide support for Code Article 10.7.1 by helping you understand the key principles related to substantial assistance.



1. Understanding the basics

1.1. Principle

The provisions relating to Substantial Assistance are specified in Code Article 10.7.1 and to the definition of Substantial Assistance in the Code

In general, Substantial Assistance allows for the partial suspension¹⁹³ of the Consequences imposed against an Athlete or other Person (other than Disqualification and mandatory Public Disclosure), if they provide information and cooperation to an ADO, criminal authority or professional disciplinary body which results in:

- ❖ The ADO discovering or bringing forward an ADRV by another Person¹⁹⁴; or
- ❖ A criminal or disciplinary body discovering or bringing forward a criminal offense or the breach of professional rules committed by another Person and the information provided by the Person providing Substantial Assistance is made available to the RMA; or
- ❖ WADA initiating a proceeding against a Signatory, WADA-accredited Laboratory or APMU for non-compliance with the Code, International Standard or Technical Document; or
- ❖ A criminal or disciplinary body bringing forward a criminal offense or the breach of professional or sport rules arising out of a sport integrity violation other than doping¹⁹⁵; or
- ❖ An Athlete or other Person seeking to provide Substantial Assistance must be permitted to provide information to the RMA under a Without Prejudice Agreement.¹⁹⁶

1.2. Jurisdiction

An RMA can agree to a partial suspension of Consequences (other than Disqualification and mandatory Public Disclosure) in cases that it brings against an Athlete or other Person. However, depending on when the Substantial Assistance is provided, other parties may be required to be involved in such a decision.

¹⁹³ For example, an Athlete commits an ADRV that carries a 4-year period of Ineligibility as a sanction. The ADO agrees a suspension of 2 years on the basis that the Athlete has provided Substantial Assistance. This means the Athlete remains subject to a 4-year period of Ineligibility, with the final 2 years suspended. In turn, this means the Athlete is eligible to compete after serving 2 years of the ban. A suspension is not the same as a reduction.

¹⁹⁴ Confessions about one's own violations are insufficient to trigger Substantial Assistance benefits (see, for instance, CAS 2007/A/1368; CAS 2009/A/1817).

¹⁹⁵ In the latter case, this is only with WADA's approval.

¹⁹⁶ See footnote 143.

Prior to a Final Decision

The RMA can refuse to exercise its discretion to suspend Consequences before an appellate decision or before the expiration of time to appeal, in which case that decision is subject to appeal.¹⁹⁷

The RMA can exercise its discretion to unilaterally suspend Consequences in any case prior to an appellate decision or before the expiration of the time to appeal.

RECOMMENDATION

In order to help the discussion, a recommended approach for RMAs would be:

1. To inform the Athlete or other Person from the outset that he/she needs to accept the consequences and sign an agreement;
2. In parallel, to provide them with a cooperation agreement containing all required information¹⁹⁸;
3. In the event the assistance provided were to be considered as substantial at a later stage, revisit the above agreement and suspend part of the consequences in accordance with principles described in Section 7.3.2 below¹⁹⁹.

After an Appellate Decision or the Expiration of Time to Appeal

The RMA can refuse to exercise its discretion to suspend Consequences (or be unable to do so because the IF and WADA do not approve the suspension), in which case that decision is also subject to appeal.

The RMA can only suspend a part of the otherwise applicable Consequences with the approval of WADA and the applicable IF;

¹⁹⁷ There is no automatic right to a suspension of Consequences based on Substantial Assistance (see CAS 2009/A/1817; CAS 2009/A/1844; CAS 2016/A/4615; CAS 2017/A/5000). However, ADOs must act reasonably and in good faith and their discretion cannot be used in an arbitrarily fashion.

¹⁹⁸ See Section 2 below regarding the Requirements.

¹⁹⁹ Depending on the stage of the proceedings, prior approval of the applicable IF and WADA could be required (see sub-section "After an Appellate Decision or Expiration of Time to Appeal" just below).



GUIDANCE

RMA's are strongly encouraged to submit their requests to WADA Legal Department (rm@wada-ama.org) using the following steps:

- ❖ The Athlete or other Person makes their case to the RMA;
- ❖ The RMA builds the case file;
- ❖ The RMA submits its request (including the suggested suspension of the period of ineligibility) with reasons and supporting documentation to WADA;
- ❖ WADA's decision is notified by the RMA to the Athlete or other Person.

2. Evaluating cases

The Code establishes a number of components that need to be satisfied before Consequences may be suspended.

2.1. Requirements on the Athlete or other Person

Full Disclosure

As contemplated in the Code definition of Substantial Assistance, the Athlete or other Person must fully disclose in a signed written and dated statement or recorded interview all information that they possess in relation to ADRVs or other proceeding described in Code Article 10.7.1.1.

Indeed, on the basis of the above, no RMA should agree to suspend Consequences unless it is satisfied that the Athlete or other Person has provided a full and frank disclosure of all of the facts surrounding the ADRV committed by the Athlete or other Person.

In a case involving an AAF, this will mean that the Athlete will have to explain how the Use of the Prohibited Substance came about, where it was obtained, how long it had been Used for, and so on.

The RMA should also be satisfied that the Athlete or other Person has provided a full and frank disclosure of all previous ADRVs.

Nature of Information

The information provided must be credible and must comprise an important part of any case or proceeding which is initiated or, if no case is initiated, must have provided a sufficient basis upon which such a case or proceeding could have been brought²⁰⁰.

The complexity of this component depends on which of the four outcomes specified in Code Article 10.7.1.1 the Substantial Assistance leads to, i.e. it results in either:

- i) the Anti-Doping Organization discovering or bringing forward an anti-doping rule violation by another Person; or
- ii) in a criminal or disciplinary body discovering or bringing forward a criminal offense or the breach of professional rules committed by another Person and the information provided by the Person providing Substantial Assistance is made available to the Anti-Doping Organization with Results Management responsibility; or
- iii) in WADA initiating a proceeding against a Signatory, WADA-accredited laboratory or Athlete passport management unit (as defined in the International Standard for Testing and Investigations) for non-compliance with the Code, International Standard or Technical Document; or
- iv) with the approval by WADA, in a criminal or disciplinary body bringing forward a criminal offense or the breach of professional or sport rules arising out of a sport integrity violation other than doping.

If the Substantial Assistance leads to another Person²⁰¹ returning an AAF, the RMA can treat this requirement as having been satisfied. For other cases, the issue of whether or not assistance constitutes Substantial Assistance is not straightforward. The CAS ruling in the IAAF vs. Pelaez matter (CAS 2011/A/2678) states that:

“...assistance will not qualify as substantial unless and until it actually results in the discovery or establishment of an anti-doping rule violation by a third party, or unless and until it actually results in the discovery or establishment of a criminal offence or of a breach of professional rules by a third party. The discovery or establishment of a, illegal act by a third party as a direct result of the information provided by the athlete seeking to benefit from the Substantial Assistance exception is the cornerstone of this mechanism, as there would

²⁰⁰ The fact that someone has been charged with a potential ADRV does not necessarily mean that information provided was “substantial”.

²⁰¹ Confessions of the accused Person about his/her own violations are insufficient and must implicate a third party (CAS 2007/A/1368; CAS 2009/A/1817 & 1844).

otherwise be no incentive for an anti-doping authority to apply lesser sanction, unless it receives something in return, which contributes to fighting doping in sport.”

Unless the RMA is satisfied that the assistance provided satisfies the requirements described in the definition of Substantial Assistance and all requirements in Code Article 10.7.1 have been met, the RMA and/or WADA and the applicable IF should decline to exercise their discretion to suspend any part of the otherwise applicable Consequences²⁰².

Full Cooperation

The Athlete or other Person must fully cooperate with the investigation and adjudication of any case or matter relating to that information, including, for example, presenting testimony at a hearing if requested to do so by an ADO or hearing panel.

The Substantial Assistance (i.e. information and full cooperation) must be provided to an ADO, criminal authority or professional disciplinary body;

This component is (in the main) straightforward, although there are one or two complications that may arise. The requirement will not arise if the Athlete or other Person provides Substantial Assistance which results in an AAF being recorded against another Person for a Prohibited Substance – an RMA will not need the Athlete or other Person to testify in such cases.

In non-analytical cases, if the Athlete or other Person's information is an important part of the case against another Person, then the Athlete or other Person must agree to act as a cooperative witness in any hearing of that case. If the Athlete or other Person refuses to do so, they will not be eligible for any suspension of Consequences based on Substantial Assistance.

- ❖ The fact that the Athlete or other Person has been offered a suspension of Consequences in return for providing Substantial Assistance should in principle be disclosed to that other Person and the relevant hearing panel.
- ❖ In this regard, the Athlete or other Person will be advised that he or she may be required by the RMA or the hearing panel to attend a hearing and give evidence.

²⁰² For instance, the lack of factual background describing the assistance and evidence adduced will not be sufficient, including where the Athlete is a key witness in a criminal trial (CAS 2019/A/6157).

2.2. Requirements on the ADO

Extent of Suspension of Consequences

The Substantial Assistance must result in one of the four outcomes specified in Code Article 10.7.1.1.

No more than three-quarters of the otherwise applicable period of Ineligibility may be suspended. If the otherwise applicable period of Ineligibility is a lifetime, the non-suspended period must be no less than 8 years.

The extent to which the otherwise applicable period of Ineligibility may be suspended must be based on “the seriousness of the ADRV committed by the Athlete or other Person and the significance of the Substantial Assistance provided by the Athlete or other Person to the effort to eliminate doping in sport, non-compliance with the Code and/or sport integrity violations.” (Code Article 10.7.1.1).

- ❖ In addition to satisfying the threshold conditions for Substantial Assistance to apply, when assessing the suspension of Consequences, the RMA should give a special consideration in particular to the following factors:
- ❖ The maximum suspension of Consequences can only be agreed to in truly exceptional cases;
- ❖ The seriousness of the Athlete or other Person’s ADRV (which may, if serious, serve to counterbalance the extent to which Consequences will be suspended), but also the seriousness of the ADRVs discovered as a result of the Substantial Assistance provided (which may, if serious, serve to increase the extent to which Consequences will be suspended);
- ❖ The number of ADRVs, criminal or disciplinary offenses, or breach of sport or professional rules (in relation to a sport integrity offence other than doping), or non-compliances with the Code, International Standard or Technical Document discovered as a result of the Substantial Assistance provided;
- ❖ The level of sophistication of the doping scheme unveiled (e.g. nature of the prohibited substance and/or prohibited method involved, potency, detectability, route of administration, source)²⁰³;
- ❖ Significance of the contribution to the fight against doping (e.g. number of individuals involved, positions they occupied in sport, whether or not these individuals are subject to anti-doping

²⁰³ CAS 2012/A/2791; CAS 20216/A/4615; CAS 2017/A/5000.

regulations, qualitative and/or quantitative value of the evidence provided, whether or not such evidence and/or information was already known to anti-doping authorities)²⁰⁴;

- ❖ How the Substantial Assistance was given (i.e. spontaneously, voluntarily and/or in a timely manner)²⁰⁵.

A sliding scale will apply thereafter, whereby the extent of the suspension of Consequences will depend upon the point in proceedings when an Athlete or other Person provided information;

Unless in exceptional circumstances²⁰⁶, it is recommended that no suspension be offered in cases which involve the Athlete or other Person's Trafficking to a Minor or Administration to a Minor, given the seriousness of such violations.

Transparency and Athlete or other Person Risk

All Athletes or other Persons who provide Substantial Assistance will be concerned about the extent to which they might be associated with the information that they have provided, and thereby suffer some form of adverse consequences by being perceived as an informant.

In respect of the reasoned decision that is Publicly Disclosed, information concerning the provision of Substantial Assistance may be redacted or otherwise kept confidential. Indeed, provisions of Code Article 14.3.2 only require the Anti-Doping Organization responsible for Results Management to Publicly Disclose "the disposition of the anti-doping matter including the sport, the anti-doping rule violated, the name of the Athlete or other Person committing the violation, the Prohibited Substance or Prohibited Method involved (if any) and the Consequences imposed".

However, since a decision to suspend Consequences on the basis of Substantial Assistance is a decision that may be appealed pursuant to Code Article 13.2, ADOs with a right to appeal will be provided with the full reasoned decision²⁰⁷, although this information shall not be disclosed beyond those Persons with a need to know and, as mentioned, is not subject to mandatory public disclosure under Code Art. 14.3.

Furthermore, in unique circumstances where WADA determines that it would be in the best interest of anti-doping, WADA may authorize an ADO to enter into appropriate confidentiality agreements limiting or

²⁰⁴ CAS 2012/A/2791.

²⁰⁵ CAS 2007/A/1368; CAS 2011/A/2678.

²⁰⁶ Such as the dismantling of a broad trafficking or the discovery of sophisticated doping schemes. Any reduction to be considered in this specific context will therefore have to be carefully weighed on and specifically reasoned.

²⁰⁷ See Code Article 10.7.1.3, first paragraph.

delaying the disclosure of the Substantial Assistance agreement or the nature of Substantial Assistance being provided to other ADOs with a right to appeal²⁰⁸.

However, in certain cases, associating the Person who has been given a suspension of Consequences with the evidence supplied may be unavoidable. Implied association might also arise if an Athlete is banned for x years but returns to involvement with sport in (say) x minus 12 months. Observers may conclude that the reason for the early return is that the Athlete or other Person must have provided assistance to the anti-doping authorities, and indeed must have given assistance in relation to a specific case. How likely this is will depend on each case.

That risk needs to be communicated to the Athlete or other Person by the relevant RMA: even though the process of a case may not require the Athlete's or other Person's involvement to be disclosed, the overall circumstances may lead others to conclude that this must have been the case.

3. Understanding WADA's role – WADA's discretionary powers

WADA has the power to agree at any stage of the Results Management process to what it considers to be an appropriate suspension of the otherwise applicable period of Ineligibility and other Consequences (Code Article 10.7.1.2).

In exceptional circumstances, WADA may agree to suspensions of the period of Ineligibility or other Consequences greater than those otherwise provided or even no period of Ineligibility, no mandatory Public Disclosure and/or no return of prize money or payment of fines or costs. As per Code Article 10.7.1.2, such decisions are not subject to appeal.

In unique circumstances (i.e. where WADA determines that it would be in the best interest of the fight against doping), WADA may authorize the applicable RMA to enter into confidentiality agreements limiting or relaying the disclosure of the Substantial Assistance provided as per Code Article 10.7.1.3²⁰⁹.

4. Reinstating full consequences

As indicated above, application of a Substantial Assistance provision does not lead to a reduction of the sanction but a partial suspension of the execution of the otherwise applicable Consequences²¹⁰.

The reason for this system is to ensure the RMA has the possibility to reinstate the original Consequences if the Athlete or other Person fails to continue to cooperate and to provide the complete and credible

²⁰⁸ See Code Article 10.7.1.3, second paragraph.

²⁰⁹ See Sub-Section "Transparency and Athlete Risk" in Article 7.3.1 above.

²¹⁰ CAS 2010/A/2203.

assistance upon which the suspension of the Consequences was based, or when it appears that the information provided was not accurate (Code Article 10.7.1.1).

If the ADO decides to reinstate the original Consequences, this decision can be appealed as per Code Article 13. Therefore, the ADO shall provide the Athlete or other Person with a reasoned decision that explains why the original Consequences have been reinstated, so that the Athlete or other Person may determine if they want to exercise their right to appeal. This decision shall also be notified to any other ADO with a right to appeal.

ANNEX A:

Checklist for Adverse Analytical Findings Report

Below are the basic steps all Anti-Doping Organizations (ADOs) shall routinely perform when in receipt of an Adverse Analytical Finding (AAF) report from a Laboratory.

1. Receipt of the Laboratory Adverse Analytical Findings Report

- ❖ Carefully read the Analytical Result Record and make sure that it contains all relevant information (Sample code, Athlete's gender, date of Sample Collection Session, Testing Authority, Suitable Specific Gravity for Analysis, etc.).
- ❖ Make sure that you don't miss any comment the Laboratory may have included.
- ❖ Always verify the date of the Sample Collection Session, the date of receipt at the Laboratory and the date of analysis to immediately identify any unusual delays in the Sample transportation/storage or analytical process that should be investigated.
- ❖ Do not hesitate to seek further clarification from the Laboratory, if necessary.

2. Conducting the initial review

- ❖ If you are not the Sample Collection Authority, make sure to obtain the original copy of the Doping Control form as soon as possible upon receipt of the Analytical Result Record.
- ❖ Verify that the Sample code on the Doping Control form matches the Sample code on the Analytical Result Record.²¹¹
- ❖ If in doubt, verify the spelling of the name of the Athlete and nationality against any reliable database available in the sport in question.
- ❖ Verify that the Doping Control form is completed correctly and includes the Athlete's signature. Contact the DCO if needed.
- ❖ Carefully read and record any comment made by the Athlete in the declaration of medication/supplement box and in the general comment box of the Doping Control form. If relevant, verify the information with the Sample Collection Personnel, including the Doping Control Officer.

²¹¹ Laboratories usually allocate a different Sample code called an internal code – you must always refer to the Sample code.

- ❖ Make sure that there is no Supplementary Report Form attached to the main Doping Control form.
- a) Does the Athlete have a TUE?
 - ❖ Carefully verify in ADAMS and with your ADO, or any other relevant ADO, if the Athlete has a Therapeutic Use Exemption (TUE) on file.
 - ❖ Note that all TUEs are supposed to be recorded in ADAMS.
 - ❖ Verify if the Athlete refers to the existence of a TUE in ADAMS.
 - ❖ If the Athlete has a TUE:
 - Check if the TUE covers the Prohibited Substance in question and the date of the Sample Collection Session.
 - Validate that the concentration found in the Sample is consistent with the route of administration and dosage indicated on the TUE approval. If the concentration is not reported in ADAMS, you can ask the Laboratory to give you the estimated concentration²¹².
 - Do not hesitate to consult an expert, including someone at the Laboratory which analyzed the sample.
- b) Departures from Standards?
 - ❖ Make sure that any apparent departure from the relevant International Standard is properly investigated before proceeding further with the Results Management process.
 - ❖ If you have concerns about the Sample Collection Session procedure, do not hesitate to contact the Doping Control Officer (DCO) in charge of the Sample Collection Session directly or through the Sample Collection Authority or the Testing Authority and ask the DCO to provide a supplementary report, if needed.
 - ❖ If you have concerns regarding the Chain of Custody or storage conditions, you can ask the Sample Collection Authority or the Testing Authority to provide you with the Chain of Custody information or ask the Laboratory to confirm that the Sample's integrity was not affected.
- c) Apparent ingestion through Permitted Route?

²¹² See ISL Article 5.3.8.4.

- ❖ Check if the athlete declared the use of a prohibited substance via a permitted route (on the DCF for example) or if the athlete declared the use of a medication that was administered via a permitted route.
- ❖ If yes, check with an expert if the use is compatible with the athlete's declaration.

If the case is closed following the initial review, a decision should be sent to the Athlete, the applicable IF/NADO and to WADA. The decision also needs to be promptly uploaded into ADAMS.

3. Notifying the Athlete of an AAF – First Notification (ISRM Article 5.1.2)

- ❖ Upon completion of the initial review, the Athlete shall always be notified promptly in writing.²¹³
- ❖ This letter contains information²¹⁴ about the AAF and the Athlete's rights under the Code, including the right to provide an explanation and the right to "B" Sample analysis.
- ❖ Ensure that the first notification contains all information mentioned in the template letter, including the right to request the documentation package, the right to provide substance assistance and the opportunity to enter into case resolution agreements etc.
- ❖ Indicate a clear deadline for (i) requesting "B" Sample analysis (e.g. 5 days) and (ii) provide an explanation in writing (e.g. 7 days). The Results Management Authority should inform the laboratory within 15 days following the reporting of an "A" Sample Adverse Analytical Finding by the Laboratory, whether the "B" Confirmation Procedure shall be conducted.²¹⁵
- ❖ The notification can be served by registered letter, courier, fax or e-mail.
 - Send the notice directly to the Athlete through a secure means or through a reliable intermediary (e.g. his/her National Federation, agent, coach, legal representative or parents, if the Athlete is a Minor).
 - You may refer to the postal or e-mail address(es) indicated by the Athlete on the Doping Control form or use the mailing address provided by the Athlete in his/her whereabouts information.
 - If you use the Athlete's e-mail, activate any read receipt or delivery receipt feature available in your e-mail account to avoid any

²¹³ See ISRM Article 5.1.2.

²¹⁴ See ISRM Article 5.1.2.1.

²¹⁵ See ISL Article 5.3.6.2.3.

misunderstanding on whether or not the Athlete actually received the notice sent to him/her.

- If the notification is sent to the National Federation, coach or legal representative, ensure that you receive a confirmation (with proof) that the Athlete has been duly informed of the content of the notification and of his/her rights.
- ❖ As the procedure is confidential at this point, you must ensure that only Persons in your ADO with a need-to-know have access to the AAF case.
- ❖ The Doping Control form and Analytical Result Record must, at the minimum, be attached to the first notification letter.
- ❖ If the Athlete declared the use of a medication on the DCF which may be the origin of the Prohibited Substance, consider requesting additional information and referring to the possibility for the Athlete to apply for a retroactive TUE as per Article 4.1 of the ISTUE.

4. Following up on the “B” Sample analysis

- ❖ “B” Sample analysis is a priority. Contact the Laboratory at the time of notification or immediately after to confirm one or more dates when the analysis can be scheduled.
- ❖ Ensure that the Athlete has expressly requested the “B” Sample analysis and inform the Athlete that failing such request, the “B” Sample analysis **may** be deemed irrevocably waived. This issue should never be left unclear.
- ❖ If the Athlete has requested the analysis of their “B” Sample, you must confirm to them by return:
 - a) Where the Sample analysis will take place, with the full address and contact details of the Laboratory (the same that performed the A Sample analysis);
 - b) The date(s) proposed by the Laboratory – another deadline shall be indicated to choose of confirm the date(s) proposed by the Laboratory;
 - c) Their right to attend the “B” Sample analysis or to be represented;
 - d) That an independent surrogate will be appointed to witness the opening of the “B” Sample if he/she cannot attend or if he cannot send a representative;
 - e) The financial conditions; and
 - f) His/her right to request the “B” Sample analysis Laboratory Documentation Package.
- ❖ An Athlete who has requested the analysis of their “B” Sample may seek a postponement of the “B” analysis. Whilst such requests may be granted on reasonable and objective grounds (visa, long travel, expert’s availability), your ADO is entitled to

reject them should they be unjustified, unreasonable or should they result in delaying the “B” Sample analysis well beyond the initial deadline or if they may compromise the results of the analysis.

- ❖ Irrespective of whether or not the Athlete has requested the “B” analysis, the results of the “B” analysis shall be communicated to the Athlete and/or their representative(s).

Athletes’ explanation:

- ❖ If the Athlete has provided an explanation within the designated short timeline, you should immediately follow-up on any new issue raised in the explanation (e.g. alleged departure(s), medical explanation, potential contaminated supplement...).
- ❖ Even if the Prohibited Substance detected is not a Threshold Substance, you may ask the Laboratory to provide you with the concentration of the Prohibited Substance or the Metabolite found in the Athlete’s Sample, which could help assessing the plausibility of the Athlete’s explanation.²¹⁶
- ❖ If the Athlete has not filed an explanation within the designated deadline, this should be acknowledged.
- ❖ You may accept extensions of the deadline to provide an explanation, especially if the case is a complex one. However, this new deadline shall not apply to the deadline for requesting the B Sample analysis if the same deadline was initially granted.

5. Formally charging the Athlete – the Notice of Charge

- ❖ A formal notice of charge shall be sent to the Athlete in writing normally upon receipt of the “B” analysis results (if it has been conducted) and/or upon preliminary review of the Athlete’s explanation and all evidence on file. As indicated above, this letter can be sent earlier and combined with the AAF notification after the initial review.
- ❖ This notice shall clearly identify the ADRV(s) the Athlete is considered to have committed, the applicable Consequences and the Athlete’s right to a hearing and all related information (when, to whom and in what form should the request for a hearing be sent?).
- ❖ Before sending the notice of charge, the ADOs should systematically and carefully verify on ADAMS or any other reliable database, if the Athlete has committed any other ADRV(s) in the previous 10 years (statute of limitation).
- ❖ The Provisional Suspension could be imposed at this stage if it hasn’t been imposed already.

²¹⁶ See ISL Article 5.3.8.4.

- ❖ At this stage, the Athlete can be given the opportunity to admit the ADRV with all Consequences.
- ❖ References to Substantial Assistance and Case Resolution Agreements shall also be made.
- ❖ In cases where the potential ADRV is intentional (where the Athlete is subject to a potential period of ineligibility of 4 years), the Athlete shall be informed that he or she can benefit from a 1-year reduction if he or she admits the violation within 20 days after the reception of the notification.

After a decision is made:

- The decision shall be sent to all relevant parties as soon as possible;
- If the decision is not in English or French, a summary in English or French shall be provided;
- The decision shall be promptly uploaded into ADAMS;
- At least the information regarding the sanction shall be published.

ANNEX B:

Investigation of Atypical Findings

As indicated in Section 2 of Chapter 3 of the Guidelines, an Atypical Finding (ATF) is a report from a Laboratory that requires further investigation by the Results Management Authority (RMA) prior to the determination of an Anti-Doping Rule Violation (ADRV). It is an indication that the Laboratory has identified certain factors to do with an Athlete's Sample that, while not constituting an ADRV, merit further investigation.

The precise nature of the investigation depends on the Prohibited Substance with which the ATF is associated. The individual investigatory steps and follow-up actions are described below.

1. Inconclusive GC-C-IRMS217

On occasions, when isotope ratio mass spectrometry (IRMS) analysis is applied as a Confirmation Procedure²¹⁸, the Laboratory may not be able to make a definitive conclusion regarding the endogenous or exogenous origin of the Prohibited Substance. In such cases, the Laboratory will report the IRMS finding as an ATF.

If the steroid profile for the Sample constitutes an Atypical Passport Finding (ATPF), as determined by the Adaptive Model when the steroid profile of the Doping Control form matched Sample is compared with the previous longitudinal steroid profile of the Athlete, the ADO should have the Athlete Passport Management Unit (APMU) review the Athlete's profile to determine if the ATPF constitutes an ADRV, or if further Testing is required.

In addition to "ATPF Confirmation Procedure Request" notifications, IRMS analysis may be triggered by a "Suspicious Steroid Profile Confirmation Procedure Request," i.e. when the steroid profile of the Sample is deemed suspicious because it meets any of the criteria specified in the Technical Document on Endogenous Anabolic Androgenic Steroids (TD EAAS²¹⁹), but the steroid profile can't be processed by the Adaptive Model.

In such cases, if the Sample is matched to a Doping Control form in ADAMS, but there is no previous longitudinal steroid profile of the Athlete²²⁰, the ADO shall collect additional Sample(s) to establish a

²¹⁷ See WADA's Guidelines for the detection of synthetic forms of endogenous anabolic androgenic steroids by GC-C-IRMS.

²¹⁸ For example, when following the analysis of the Markers of the steroid profile, the Laboratory receives an ATPF Confirmation Procedure Request or a "Suspicious Steroid Profile Confirmation Procedure Request" notification through ADAMS, or a request for the confirmatory analysis of boldenone or formestane findings.

²¹⁹ <https://www.wada-ama.org/en/resources/science-medicine/td2018eaas-0>

²²⁰ Athlete tested only once, i.e. steroid profile values are only available for this one Sample.

longitudinal steroid profile that can be processed by the Adaptive Model and subsequently reviewed by the APMU, as appropriate.

Conversely, if the Sample can't be matched with a Doping Control form in ADAMS, the ADO should check if a previous longitudinal steroid profile of the Athlete exists (e.g. for ADOs not using ADAMS or not entering the Doping Control form information into ADAMS that may have longitudinal steroid profile records for the Athlete), and have it reviewed by the APMU, which would determine if the suspicious profile of the Sample constitutes an ADRV or if further Testing is required. If no such previous longitudinal steroid profile records exist, then the ADO shall collect additional Sample(s) to establish such a profile. The APMU should suggest the optimal timing of the subsequent Sample.

2. Nandrolone Metabolite (19-NA)

When the Laboratory detects in a Sample from a female Athlete using norethisterone (contraceptive) a level of 19-NA superior to 10 ng/mL, it will report the finding as an ATF²²¹. It is advisable for the ADO to perform further Testing on the Athlete.

3. Human growth hormone (hGH)

Tests for the detection of doping with hGH were developed to distinguish between the proportions of hGH found under normal physiological conditions and those found after doping with recombinant (exogenous) hGH.

For an initial Presumptive Adverse Analytical Finding (AAF) on the A Sample, the Laboratory proceeds with a Confirmation Procedure. The Laboratory will conclude an AAF only if the analytical results exceed the respective Decision Limit (DL) values established for both confirmation assays. When the analytical results exceed the DL values for only one of the two assays employed for the Confirmation Procedure, the Laboratory will report the finding as an ATF²²². Target Testing of the Athlete by the competent ADO is recommended.

²²¹ See relevant Technical Document available at <https://www.wada-ama.org/en/resources/science-medicine/technical-documents-index>.

²²² See WADA's Guidelines for hGH isoform differential immunoassays available at <https://www.wada-ama.org/en/resources/science-medicine/technical-documents-index>.

4. Human Chorionic Gonadotropin (hCG)

The finding of hCG in the urine of a male Athlete at concentrations greater than 5 mIU/ml may be an indicator of hCG use for doping purposes²²³. However, due to certain factors²²⁴, additional investigations might be necessary. For this reason, the Laboratories occasionally report an ATF. If an ATF is reported for hCG, the RMA must immediately notify the Athlete of the Laboratory finding and urge them to submit to medical follow-up investigations to address the possibility of a pathophysiological condition as the cause of the elevated total urinary hCG concentration, given that the cause could be a testicular cancer²²⁵. The RMA shall also advise WADA when clinical investigations are conducted on an Athlete.

If the results of the clinical investigations performed on the Athlete do not show a pathophysiological cause for the elevated total hCG finding, the RMA should conduct at least two (2) follow-up No-Advance Notice Tests on the Athlete. The follow-up Samples should be analyzed at the same Laboratory that produced the ATF.

If the follow-up tests reflect similar suspicious results as defined under the WADA Guidelines for the reporting and management of hCG findings, the RMA should conclude that no ADRV has occurred, and no further investigations are necessary. This information shall be documented in the dossier of the Athlete concerned and shared with WADA (and other ADOs, as relevant).

If the Initial Testing Procedure(s) for a follow-up test produces elevated values for total hCG which differ from the initial test, the RMA should treat the results as suspicious²²⁶ and contact WADA for further instructions on the Results Management process of the case.

If a follow-up test produces a Presumptive Adverse Analytical Finding from the repeat of the Initial Testing Procedure, and the Confirmation Procedure confirms the presence of intact hCG at concentrations greater than 5 mIU/mL²²⁷ and is reported as an AAF, the Results Management process is followed, as in the case for Use of other Prohibited Substances or Prohibited Methods.

²²³ See WADA's Guidelines for reporting and management of human chorionic gonadotropin (hCG) findings available at <https://www.wada-ama.org/en/resources/science-medicine/technical-documents-index>

²²⁴ Complexity of hCG isoform composition in urine, reported association of some hCG molecular forms with pathophysiological conditions such as cancer.

²²⁵ The ADO should also advise WADA when clinical investigations are conducted on an Athlete.

²²⁶ The Sample is considered suspicious since urinary total hCG concentrations associated with physiological or pathological conditions (e.g. 'familial' hCG, cancer) are usually maintained at a constant level or increased over time with disease progression. Therefore, decreased concentrations of total hCG in follow-up test(s) may be indicative of previous Use of the Substance for doping purposes, while increased concentrations may warrant further clinical investigations. These suspicious cases should be further elucidated by performing a battery of hCG tests, specific for different hCG isoforms, at specialized reference Laboratories.

²²⁷ After adjusting to a urine Specific Gravity as specified in the relevant Technical Document available at <https://www.wada-ama.org/en/resources/science-medicine/technical-documents-index>.

If medical information is provided by the Athlete to support the claim that the result is due to a physiological or pathological condition, such information shall be taken into account in the Results Management of the case.

A copy of the report confirming an elevated concentration of hCG, including the results of the initial and subsequent follow-up tests, and any related analytical or clinical information, are forwarded to WADA.

5. Erythropoietin (EPO)

The Technical Document on Harmonization of Analysis and Reporting of Erythropoiesis Stimulating Agents (ESAs) by Electrophoretic Techniques (TD EPO)²²⁸ recommends the application of a unique electrophoretic method for the Confirmation Procedure of ESA findings. Therefore, the Laboratory will report the result as either Negative or an AAF.

On occasion, the Laboratory may choose to apply a second detection method as additional scientific evidence to arrive at a final conclusion. If so, the acceptance and identification criteria must be fulfilled on both procedures employed before reporting an AAF. When the acceptance and identification criteria are met for only one of the methods employed for the Confirmation Procedure, the Sample will be reported as an ATF. Target Testing of the Athlete by the competent ADO is advised.

6. Boldenone

In addition to the possible reporting of an ATF for boldenone or boldenone Metabolite(s) when the results of the GC-C-IRMS analysis²²⁹ are inconclusive, a Laboratory may report an ATF when the concentrations are estimated below 5 ng/mL (after adjustment for urine specific gravity, if needed). Target Testing of the Athlete by the competent ADO is advised.

7. Formestane

Formestane is an aromatase inhibitor²³⁰ which may be naturally found in urine samples at low concentration and requires a similar Analytical Testing as an EAAS²³¹. In some cases, if the IRMS is not conclusive, the Laboratory may report an ATF.

²²⁸ <https://www.wada-ama.org/en/resources/science-medicine/td2014epo>

²²⁹ Which is mandatory when the concentrations of boldenone and/or its Metabolite(s) in the Sample are between 5 ng/mL and 30 ng/mL.

²³⁰ Prohibited List Section S4.1.

²³¹ Please see the relevant Technical Document available at <https://www.wada-ama.org/en/resources/science-medicine/technical-documents-index>

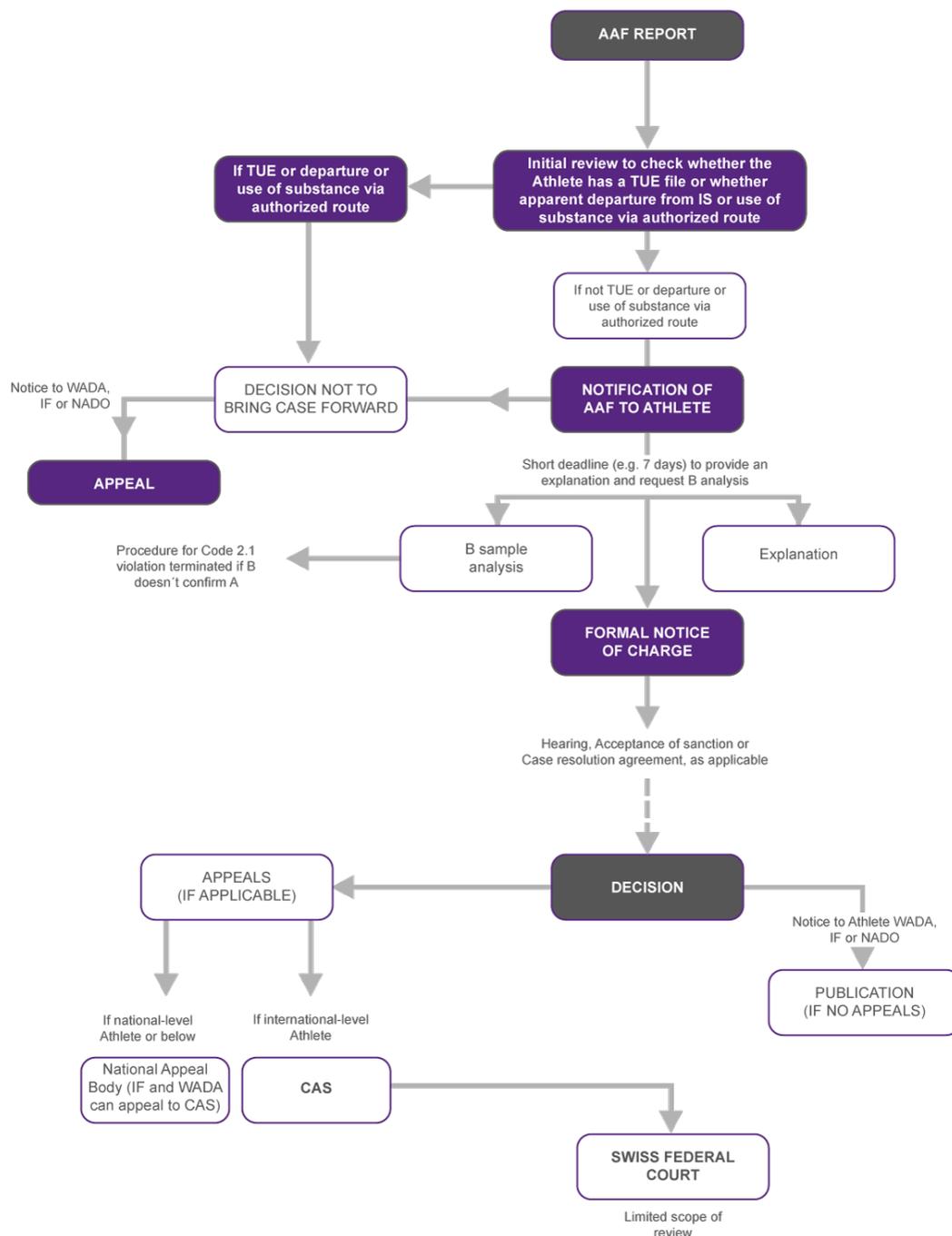
8. Other findings

An ATF may be reported by the Laboratory if it considers that a result is suspicious, but can't be confirmed as an AAF²³². The required investigation will then depend on the nature of the case (e.g. Target Testing, longitudinal study, GC-C-IRMS analysis, etc.). Keeping a detailed records of any ATF reported against an Athlete is recommended.

²³² For example, in cases of prednisone/prednisolone (microbial degradation), Presumptive Adverse Analytical Finding in A Sample, but not enough urine left – B Sample splitting necessary, etc.

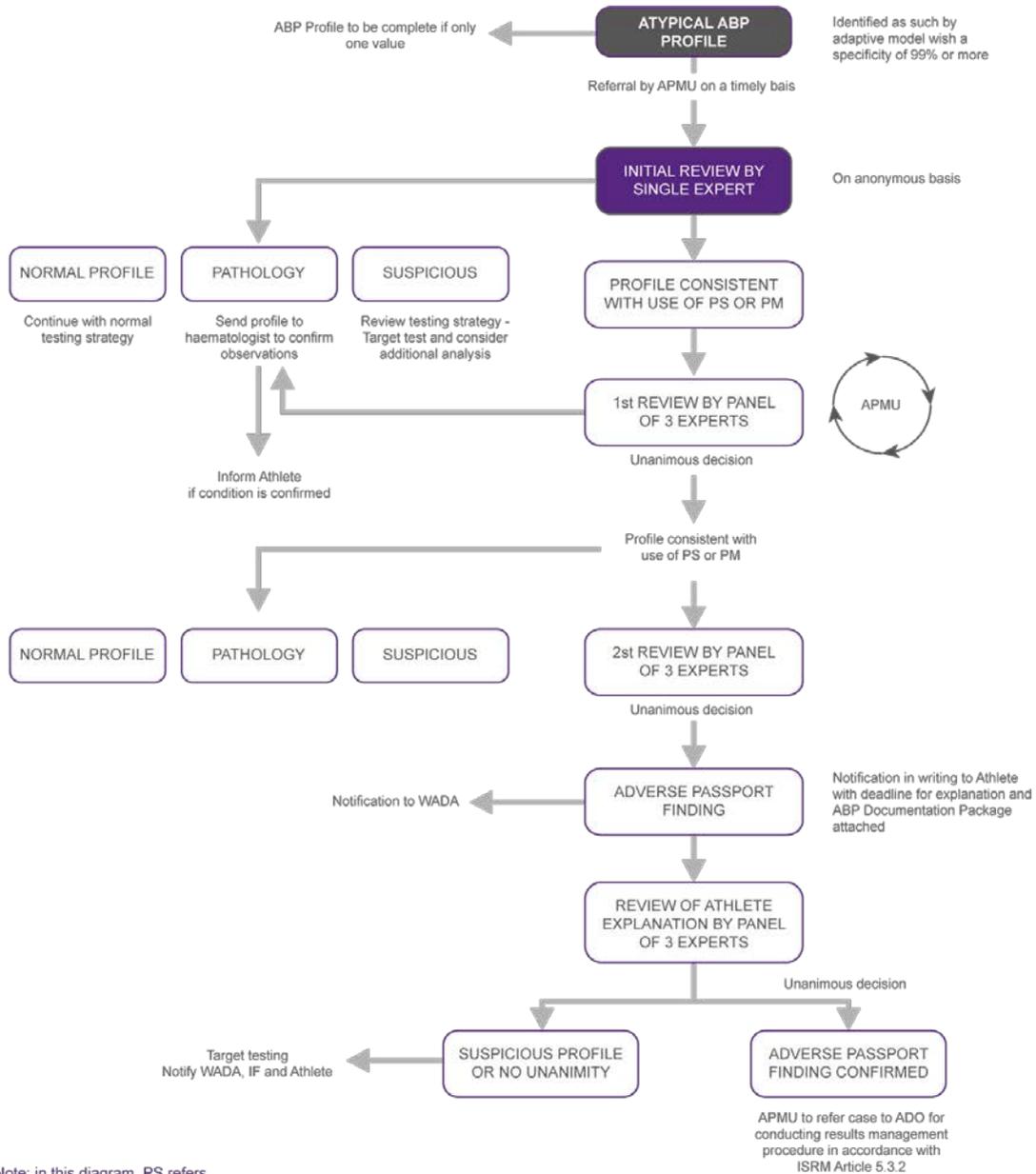
ANNEX C:

Chart: Results Management Process – Adverse Analytical Findings (AAF)



ANNEX D:

Chart: Athlete Passport Process



ANNEX E:

Chart: Results Management Process – Whereabouts (WF)

