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FINA Doping Panel 1/07

## FINA Doping Panel,

comprised of

Harm Beyer	Chairman
Jean Lob	Member,
Gordon E. Peterson	Member

In the proceedings against

the diver

**José Antonio Guerra Oliva**

affiliated to the

Federación Cubana Natación

represented by: - Alberto Alvarez Gonzalez

**it was decided on 18 January 2007:**

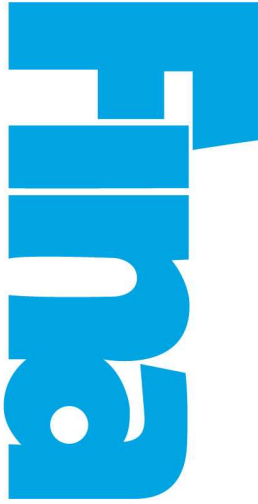
The case of the athlete is dismissed.

The provisional suspension, imposed on the diver, is lifted.

The diver shall bear the costs of his representative and his own costs.

FINA shall be responsible for its costs.

This judgement shall become effective immediately.



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## I THE PARTIES INVOLVED

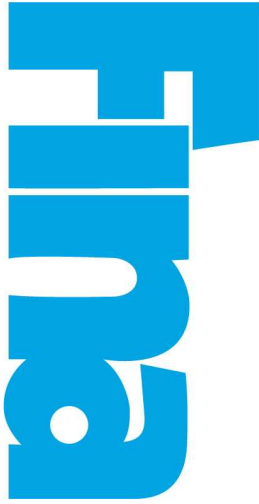
01. The FEDERATION INTERNATIONALE de NATATION (FINA) is the world-wide aquatic sports organisation. FINA has established and is carrying out, *inter alia*, an Anti - Doping - Control Program, in-competition as well as out-of-competition.
  
02. José Antonio Guerra Oliva is a 27 years old male elite class diver. He started diving, when he was eight (8) years old. The first international competition, in which he took part, was held in 1996. He competed in the Olympic Games 2000 in Sydney and 2004 in Athens. Currently he is number one (1) on the FINA World Ranking List for 10m platform diving men. He is affiliated to the Federación Cubana Natación, which is a Member Federation of FINA.

## II BACKGROUND FACTS

03. On 20 July 2006 the diver competed in the “XX Juegos Centroamericanos y del Caribe” in Cartagena (COL). At this occasion he was selected to undergo a doping control test.

A urine sample was collected from him in the doping control station at the venue and divided into an “A” sample and a “B” sample, each coded with the number 991779. The samples were sent on 21 July 2006 to the WADA accredited laboratory “Laboratorio de Control al Dopaje Instituto Colombiano de Deporte “Coldeportes” in Bogotá, Columbia (COL).

04. The laboratory on 26 July 2006 reported to FINA, that in the “A” sample  
*“was detected Epitestosterone in a concentration of 288.4 +/- 6.32 ng/ml, corrected by specific gravity 302.78 ng/ml”*



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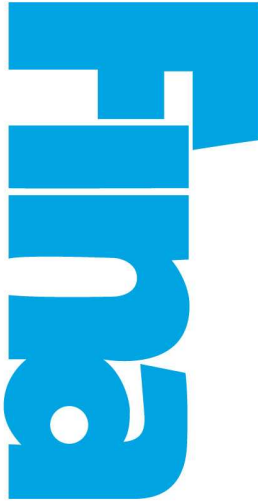
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(The calculation was made incorrectly; if the specific gravity correction factor is applied correctly, it comes to approximately 236 ng/ml.) This concentration exceeded the limit (200ng/ml) allowed by WADA and was accordingly considered to be an adverse analytic finding for masking agents.

The *isotope ratio mass spectrometry (IRMS)* on the “A” sample was conducted and indicated an application of exogenous Epi-testosterone.

### III Proceedings

05. FINA by correspondence of 28 July 2006 requested from the organisers of the event in Cartagena (COL) to be informed about the name of the athlete concerned. And by correspondence of 21 and 29 August 2006 FINA advised that as per FINA Rule DC 5.2.5 this case would be heard by the FINA Doping Panel.
06. By correspondence of 10 August 2006 FINA informed the athlete that he had tested positive and that he had the right to promptly request the analysis of the “B” sample (FINA Rule DC 7.1.2).
07. On request of the athlete, the “B” sample was then opened in the laboratory in Bogotá (COL) on 11 September 2006 and analysed on 11 and 12 September 2006. However, due to a malfunctioning of the technical equipment in the laboratory the *isotope ratio mass spectrometry (IRMS)* could not be conducted. (While analysing the “A” sample the IRMS was successfully done.)

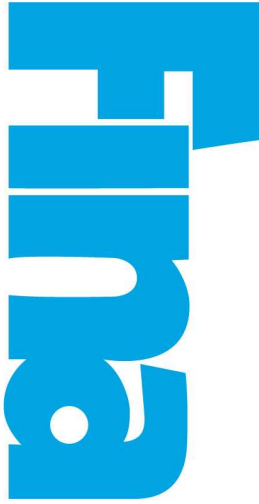


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08. The result of the analysis of the “B” sample was then reported by the laboratory as follows:  
*“In the sample “B” 991779 was confirmed the presence of Epi-testosterone in concentration of 282.9 +/- 2.64 ng/ml and corrected by specific gravity of 235.82 ng/ml. The analysis by GC-C-IRMS was not performed because of technical failures of the instrument.”*
09. The FINA Executive on 20 September 2006 forwarded the matter to the FINA Doping Panel for a hearing, to be held in accordance with FINA Rule C 21.5.
10. On 22 September 2006 the FINA Executive decided, according to FINA Rule DC 7.1.12 to provisionally suspend the athlete until a hearing before the FINA Doping Panel could be held. This suspension entered into force on the same day.
11. Following a request of the FINA Doping Panel, the missing IRMS of the “B” sample was conducted. As the technical equipment in the Bogotá laboratory was still out of order, the remaining sample was sent to the WADA accredited laboratory in Cologne (GER).
12. The laboratory in Cologne (GER) by correspondence of 6 November 2006 confirmed that they had received *“a bottle with code number B 991779 with about 3 ml of urine”*. The laboratory further reported that on request of FINA the above mentioned sample was analysed with GC/C/IRMS for Epi-testosterone. The result was that an application of exogenous Epi-testosterone was indicated.



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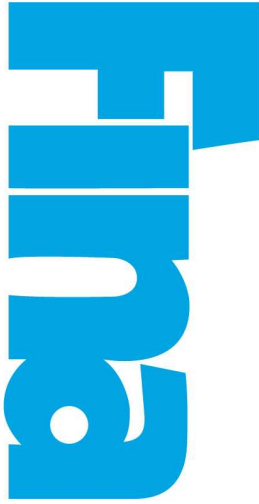
Additionally the laboratory remarked that because of the small volume of the sample B 991779 (3 ml), only one IRMS screening analysis could be performed.

13. The FINA Doping Panel on 8 December 2006 conducted a hearing at the Headquarters of FINA in Lausanne (SUI). The hearing was attended by
  - i. the athlete personally,
  - ii. Mr. Alberto Alvarez González, Member of Cuban Olympic Committee, representing the diver,
  - iii. Advocate Jean-Pierre Morand, representing FINA.
14. The hearing was adjourned due to permit further research to be conducted. The FINA Doping Panel decided, that an expert witness was to review the analytical reports by the laboratory in Bogotá (COL) on the “A” sample as well as the “B” sample.
15. The review was done by Prof. Jordi Segura, Director of the WADA accredited laboratory in Barcelona (ESP) and member of the FINA Doping Control Review Board.

His report was received on 6 January 2007. Copies were sent for comments to Advocat Jean-Pierre Morand, representative of FINA, and Federación Cubana Natación, FINA Member Federation to which the athlete belongs.

#### **IV MOTIONS and CONTENTIONS**

16. Mr. Alberto Alvarez Gonzalez asserted in regard to the analytical report on the “A” sample:
  - The documentation is not a complete package. It is not in accordance with the standards of WADA for this kind of documentation.



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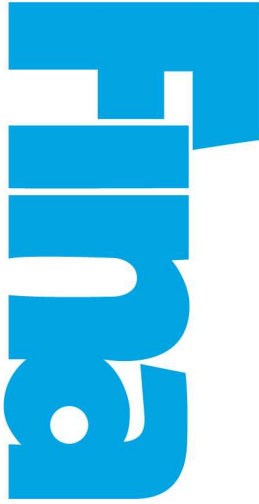


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- The concentration of the reference compound to quantify a substance should be near the level of the sample concentration to quantify in order to minimize error. In this case the reference concentration is one order below the substance to quantify.
- As the reference substance is deuterated compound, it is necessary to apply isotopic correction equations. The values obtained by the laboratory are not correct.
- The laboratory made use of a wrong correction factor for the specific gravity.
- In all cases, in which a quantification process is carried out, according to WADA the laboratory shall report the uncertainty of the method used. This was not done in this case.
- The report is insufficient in regard to *isotope ratio mass spectrometry* (IRMS) carried out.

17. In regard to the analytical report on the “B” sample Mr. Alberto Alvarez González asserted:

- The sample preparation was carried out with disposable syringes instead of using precision and calibrated pipettes.
- IRMS analysis could not be performed because of the malfunction of the instrument.
- The total amount of the “A” sample volume was consumed in the analysis performed. For the “B” sample analysis only 2 ml were used.
- The “B” sample after opening remained unsealed although the laboratory was asked to reseal it.
- Finally he noted that the persons, who did the analysis of the “B” sample were also involved in the analysis of the “A” sample. This is a violation



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of the WADA International Standard for Laboratories.

18. Mr. Alberto Alvarez González accepted the report about the IRMS screening on the “B” sample performed in the laboratory in Cologne (GER). He expressed trust in this laboratory. However, it was noted that the laboratory in Cologne (GER) was only provided with 3 ml of urine and could only perform one IRMS screening. Furthermore, it was unknown whether the bottle with the 3 ml of urine arrived at the laboratory in Cologne (GER) sealed or unsealed.

(On request by Mr. Jean-Pierre Morand the laboratory in Cologne (GER) informed him, that the bottle with urine was unsealed when it arrived at the laboratory.)

19. Mr. Jean-Pierre Morand, representative of FINA, pointed out that the positive finding in this case is based on a double foundation:

*“The report that there is a concentration above the limit. In this case the analysis of both A and B samples were conducted by the laboratory in Bogota.*

*The report that the IRMS analysis shows that the substance was of exogenous origin. In this case, the IRMS analysis of the A sample was conducted by Bogota, while the analysis of the probe taken out of the B sample was conducted in Köln.”*

He also noted *“that in accordance with principle applicable to endogenous substances, a sample must be considered as positive if the exogenous origin can*



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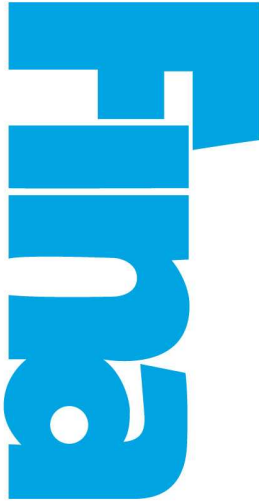
*be demonstrated through reliable means (including in particular IRMS), irrespective of its concentration.*

*“On the whole however and considering the overall results (combination of finding of a high concentration + 2 positive IRMS analysis), use of exogenous substances appears to be established”.*

20. Prof. Jordi Segura, who was requested by the Panel to review the laboratory reports presented by the laboratory in Bogotá (see above Paragraph 15) informed:

- *“It appears from the reports that the same analyst ... opened both the A and the B sample. Also the extraction procedures for epitestosterone were carried out by the same analyst....*
- *The calculation of the correction for specific gravity is done erroneously on the analysis of the A sample.*
- *IRMS analysis of A sample: The measurements of the delta value for epitestosterone were carried out at the limit of sensitivity of the instrument for the sample 991779A (9 mV for m/z 44), for the negative urine (12 mV) and for the positive urine (72 mV). It is known that accuracy and precision are difficult in those situations. Laboratory validation in those conditions would be needed to fully rely on the results presented.*
- *Quantification of Epitestosterone: The laboratory has applied a method of quantification based on deuterated internal standards. Although details of the volumes and solutions used to add those standards to the urines are not presented, it is repeatedly indicated in the reports that the final amounts are 90 ng/ml for testosterone-d3 and 15*





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*ng/ml for epitestosterone-d3 .... If those concentrations are correct, then all the calculations in the report for the concentrations of epitestosterone and testosterone are wrong.”*

A re-calculation by Prof. Jordi Segura came to the result:

	<u>Testosterone concentration</u>	<u>Epitestosterone concentration</u>
Sample A	80 ng/ml	216 ng/ml
Sample B	75 ng/ml	212 ng/ml”

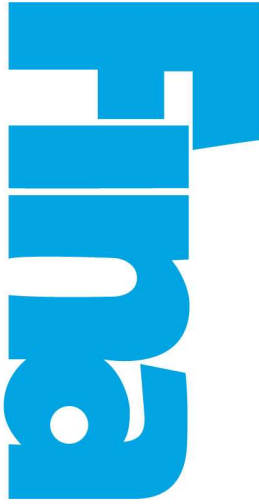
*“When uncertainty coverage is to be applied to those concentrations, the safe limit of the concentration would probably fall below the decision limit of 200 ng/ml both for the A and the B sample”.* He notes further that the uncertainty of the methods applied by the Bogotá laboratory are not presented.

## **V IN LAW**

21. The Anti-Doping Rules approved by the FINA Congress on 11 July 2003 are to be applied.
22. The FINA Executive was entitled to forward the case to the FINA Doping Panel according to FINA Rule DC 5.2.5. The “XX Juegos Centroamericanos y del Caribe” in Cartagena (COL) in which the athlete competed were held by a regional organisation consisting of Member Federations of FINA.

## **VI JUDGEMENT**

23. The case is dismissed as the persons who conducted the analysis of the “B” sample were also involved in the analysis



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of the "A" sample. This was a violation of the International Standards for Laboratories. Such a departure from the International Standard is serious enough to cause the acquittal of the athlete. (see Court for Arbitration in Sport (CAS), 20.12.2006, 2006/A/1119 UCI/Landaluce, Nr. 95 - 115).

24. Since the case is to be dismissed for the reason set forth in paragraph 23 above, the Panel did not consider in detail the further arguments submitted by the athlete's representative, by FINA's representative and by Prof. Jordi Segura.

## **VII THE COSTS**

25. The serious violation of the International Standard for Laboratories mentioned above (Paragraph 23) does not constitute a declaration of the athlete's innocence (See CAS as mentioned in Paragraph 23).
26. The costs of the athlete and his representative are to be borne by the athlete. FINA's costs are to be borne by FINA.

Harm Beyer

Jean Lob

Gordon E. Peterson

Signed on behalf of all three Panel Members

Harm Beyer

### Appeal Instruction

An appeal against this decision may be referred tot the Court of Arbitration for Sport (CAS), Lausanne, Switzerland not later than twenty one (21) days after receipt of this judgement (FINA Rule C 12.9.3).