



Arbitration CAS 2000/A/310 L. / International Olympic Committee (IOC), award of 22 October 2002

Panel: Mr. Yves Fortier (Canada), President; Mr. Stephan Netzle (Switzerland); Mr. Jan Paulsson (France)

Wrestling/Olympic Games

Doping (nandrolone)

Use of nutritional supplements

Strict Liability Rule

Validity of the testing procedure

1. The express terms of Chapter II, Article 2.2 of the Olympic Movement Antidoping Code (OMAC) clearly provide for the application of the principle of strict liability in regard to the offence of doping. The IOC has the initial burden of proving the presence of a prohibited substance in the body of the athlete that is the objective elements of the offence of doping. If the IOC meets its initial burden of proof, the principle of strict liability creates a presumption that a doping offence has been committed. The burden of proof then shifts to the athlete who may rebut the presumption.
2. From a purely scientific perspective, there may always exist a possibility that concentrations of 19-norandrosterone above 2 ng/ml could occur endogenously. It may well be that further indeed better studies should be undertaken. However, absent expert evidence to the contrary, the CAS has no basis for questioning the reliability of the studies conducted by experts in this field or the experience of the IOC-accredited laboratories.
3. In the present case, the athlete has failed to rebut the resulting presumption of a doping offence: (i) failure to prove any discrepancies in the volume of urine recorded on the doping control documents, (ii) failure to prove a broken chain of custody, (iii) failure to prove any procedural irregularity in regard to the opening and analysis of the B sample. Any minor irregularity cannot be considered to have affected the results of an otherwise valid test.

On 30 September 2000, L. placed first in a men's freestyle wrestling event, held at the XXVII Olympic Games in Sydney, Australia. As one of the top four competitors, L. was automatically selected for doping control immediately following the gold medal match.

Shortly after collection, Sample No. IOC A/B 403099 was submitted for analysis to an IOC-accredited laboratory, the Australian Sports Drug Testing Laboratory (“ASDTL”), in Pymble, Australia, which was responsible for all doping analyses carried out in connection with the Sydney Olympic Games.

The chain of custody from the Doping Control Station to ASDTL is demonstrated by three forms: the Doping Control Transport Form; the Doping Control Laboratory Advice Form; and ASDTL’s Sample Custody Form. Read together, these forms record that Sample No. IOC A/B 403099 was placed in a Security Transport Bag bearing Seal No. A247341 at the Doping Control Station and delivered to ASDTL for analysis at 21:50 on 30 September 2000.

ASDTL’s supporting laboratory reports show the concentration of 19-norandrosterone to be 23 ng/ml in the A sample. Substitutes Appendix A to the OMAC mandates that IOC-accredited laboratories must report urinary concentrations of 19-norandrosterone above 2 ng/ml for males as evidence of the presence of the prohibited substances nandrolone, norandrostenedione, norandrostenediol or related substances.

By letter dated 2 October 2000, the Chairman of the IOC Medical Commission immediately informed the Chef de Mission of the German National Olympic Committee (“NOC”) that the result of the analysis of the A sample was positive.

On 4 October 2000, ASDTL proceeded to open and analyse the B sample in the presence of the German NOC’s team doctor and of the German national wrestling team doctor, together with representatives of the IOC Medical Commission and the World Anti-Doping Agency (“WADA”). L. was not present for this procedure.

In its reporting letter sent to the IOC Medical Commission on 5 October 2000, ASDTL stated the following in regard to its analysis of the B sample: *Positive Results for B403099 – metabolites of nandrolone, norandrostenedione or norandrostenediol.*

Upon receipt of ASDTL’s reporting letter on the B sample, the Chairman of the IOC Medical Commission invited L. and up to three representatives of the German delegation to attend a meeting of the IOC Medical Commission in Lausanne.

Further to this meeting, the IOC Medical Commission proposed the following sanctions to the IOC Executive Board:

- Disqualification of the athlete,
- Withdrawal of medal,
- Exclusion from the Games of the XXVII Olympiad.

Upon review of the IOC Medical Commission’s recommendation, the IOC Executive Board rendered the following decision pursuant to Rule 25, Paragraph 2.2.1 of the Olympic Charter on 23 October 2000 (the “IOC Executive Board Decision”):

1. *The athlete L., member of the Germany (GER) team, is disqualified and excluded from the Games of the XXVII Olympiad for use of prohibited substances (Chapter II, Article 2.2 of the Olympic Movement Anti-Doping Code).*
2. *The National Olympic Committee for Germany is hereby ordered to withdraw and return the gold medal and the diploma awarded to the athlete L. (...).*
3. *This decision shall enter into force immediately.*

On 7 November 2000, L. filed a Statement of Appeal against the IOC Executive Board Decision with the Court of Arbitration for Sport (the "CAS").

On 14 March 2001, after consultation with the parties, the Panel decided that this appeal would be conducted jointly with the Appellant's related appeal in CAS 2000/A/312 L. v. FILA.

On 26 March 2001, the IOC and FILA each filed an Answer with supporting exhibits in accordance with the extension of the time limit granted by the Panel.

The hearing in this appeal and the FILA Appeal was held on 3 July 2001 in Geneva.

The Panel heard the oral submissions of counsel for the parties and the evidence of the following witnesses: Prof. Werner Franke (University of Heidelberg, expert witness called by the Appellant); Mr. Jürgen Scheibe (fact witness called by the Appellant); Prof. David Cowan (Director of the Drug Control Centre, King's College, London, expert witness called by the IOC); and Ms. Nicky Vance (Director, World Anti-Doping Agency, fact witness called by the IOC).

In his Appeal Briefs and oral submissions, the Appellant advanced five main arguments:

- (a) Discrepancies in the reported volume, pH level and specific gravity cast serious doubt on the chain of custody and true origin of Sample No. IOC A/B 403099;
- (b) The IOC is not entitled to rely upon the results of the analysis of Sample No. IOC A/B 403099 due to the failure to provide the Appellant with personal notice of the opening and analysis of the B sample;
- (c) The IOC is not entitled to rely upon the principle of strict liability but rather must prove both objective and subjective elements of the offence of doping;
- (d) The detection of 19-norandrosterone above the IOC threshold of 2 ng/ml does not provide scientifically reliable evidence of an exogenous administration of nandrolone; and
- (e) The elevated concentration of 19-norandrosterone detected in Sample No. IOC A/B 403099 may have been caused by either: (i) endogenous reaction to injuries; or (ii) contaminated food supplements or medication.

In its Answers and oral submissions, the IOC has advanced the following five main submissions:

- (a) The evidence proves that the Appellant, and no one else, provided Sample No. IOC A/B 403099;

- (b) The IOC complied fully with the OMAC notice requirements in regard to the opening and analysis of the B sample;
- (c) The principle of strict liability applies to the offence of doping;
- (d) The detection of 19-norandrosterone above the IOC threshold of 2 ng/ml provides positive and reliable evidence of an exogenous administration of nandrolone; and
- (e) There is no basis for finding that the elevated concentration of 19-norandrosterone detected in Sample No. IOC A/B 403099 was caused by either: (a) endogenous processes resulting from injuries; or (b) contaminated food supplements or medication.

In its Answer dated 26 March 2001, FILA avers that the doping control procedure at issue in this case was conducted under the authority of the IOC. FILA nevertheless must rely upon the results of this doping control procedure, which it considers to have been carried out correctly, in application of the FILA Doping Regulations. FILA has thus made a number of submissions in support of the validity of the doping control procedure conducted by the IOC in regard to the Appellant.

FILA submits that the Appellant has not raised any argument which casts doubt on the positive results of the IOC doping control procedure or which would otherwise justify overturning the IOC Executive Board Decision.

LAW

1. The jurisdiction of the CAS and the Panel arises from the provisions of the CAS Code, the OMAC and the Olympic Charter.
2. Article R47 of the CAS Code provides the following in respect of appeal arbitration proceedings:

Appeal

A party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body.

3. Chapter III, Articles 1 and 6 of the OMAC provide the following in regard to arbitration:

Article 1:

Any Participant affected by a decision rendered in application of this Code by the IOC, an IF, an NOC or other body may appeal from that decision to the Court of Arbitration for Sport, in accordance with the provisions applicable before such court. [...]

Article 6:

Participants shall accept the individual or joint obligation to submit disputes concerning the application of this Code to the Court of Arbitration for Sport. Such acceptance is presumed by the very fact of participation by the Participants in the Olympic Movement. Any de facto refusal of such acceptance shall result in the Participants being considered as having excluded themselves from the Olympic Movement.

4. Rule 74 of the Olympic Charter provides the following in regard to the arbitration of disputes relating to the Olympic Games:

74 Arbitration

Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration.

5. In view of Chapter III, Articles 1 and 6 of the OMAC and Rule 74 of the Olympic Charter, it is clear that this appeal against the IOC Executive Board Decision meets the jurisdictional requirements set out in Article R47 of the CAS Code.
6. Furthermore, the parties expressly confirmed the jurisdiction of the CAS and the composition of the Panel by countersigning the Order of Procedure.
7. In accordance with Article R28 of the CAS Code, the seat of this appeal arbitration proceeding is Lausanne, Switzerland.
8. In accordance with Article R29 of the CAS Code, the language of this appeal arbitration proceeding is English.
9. The applicable procedure is that specified for appeal arbitration proceedings in Article R47 *et seq.* of the CAS Code and in the Order of Procedure.
10. Article R57 of the CAS Code provides the following in respect of the Panel's scope of review: "*The Panel shall have full power to review the facts and the law.*" Accordingly, the Panel is not bound by the evidence adduced before, or the factual or legal findings of, any other body or court which has ruled on this case.
11. With respect to appeal arbitration proceedings, Article R58 of the CAS Code provides the following in regard to the applicable law:

Law Applicable

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports body which has issued the challenged decision is domiciled.

12. The "*applicable regulations*" in this case are contained in the OMAC, as defined above in Section 1.2. These rules do not specify any choice of law in respect of an appeal to the CAS or otherwise.

13. In the absence of a choice of law by the parties, Article R57 of the CAS Code stipulates that the law of the country in which the IOC is domiciled shall apply. Rule 19.2 of the Olympic Charter provides that the domicile of the IOC is in Lausanne, Switzerland. Accordingly, the Panel shall apply the law of Switzerland.
14. As specified in the IOC Executive Board Decision, the offence at issue in this appeal is that set out in Chapter II, Article 2.2 of the OMAC:
Article 2
Doping is: [...]
 2. *the presence in the athlete's body of a Prohibited Substance or evidence of the use thereof or evidence of the use of a Prohibited Method.*
15. The substances prohibited by the OMAC are identified in Substitutes Appendix A to the OMAC. Under Substitutes Appendix A, the prohibited substances include, *inter alia*, the following anabolic androgenic steroids: nandrolone, 19-norandrostenediol, 19-norandrostenedione and related substances.
16. Substitutes Appendix A further provides that IOC-accredited laboratories must report urinary concentrations of 19-norandrosterone above 2 ng/ml for males as evidence of the presence of the prohibited substances nandrolone, 19-norandrostenediol, 19-norandrostenedione or related substances.
17. For the following reasons, the Panel concludes that the IOC has established that the Appellant committed a doping offence under Chapter II, Article 2.2 of the OMAC:
 - (a) The principle of strict liability applies to the offence of doping;
 - (b) The IOC has proven the objective elements of a doping offence; and
 - (c) The Appellant has not rebutted the resulting presumption of a doping offence.
18. In the opinion of the Panel, the express terms of Chapter II, Article 2.2 of the OMAC clearly provide for the application of the principle of strict liability in regard to the offence of doping.
19. The CAS has consistently applied the principle of strict liability where justified by the terms of the doping control rules at issue: CAS 95/141 C. v/ FINA, Digest I, p. 215 at pp. 219-220; CAS 95/142 L. v/ FINA, Digest I, p. 225 at pp.230-231; CAS 95/150 V. v/ FINA, Digest I, p. 265 at pp. 271-272; CAS 96/149 A.C. v/ FINA, Digest I, p. 251 at p. 257; CAS 98/208 N., J., Y, & W. v/ FINA, Digest II, p. 234; CAS OG 00/011 Raducan v/ IOC, Digest II, p. 665 at p. 670; CAS 2001/A/317 A. v/ FILA.
20. Moreover, the Swiss Federal Court has specifically held that doping control rules which provide for strict liability are valid under the law of Switzerland: Swiss Federal Court, G. v/ FEI, 15 March 1993, Digest I, p. 561 at p. 575; Swiss Federal Court, N., J., Y, & W. v/ FINA, 31 March 1999, 5P.83/1999, Digest II, p. 775.

21. The principle of strict liability, and its application in the context of doping control rules such as those at issue in this appeal must, however, be properly defined.
22. Firstly, the IOC has the initial burden of proving the presence of a prohibited substance in the body of the athlete or, in other words, the objective elements of the offence of doping: CAS 98/208 N., J., Y, & W. v/ FINA, CAS Digest II, p. 234 ff.; CAS 99/A/234 and CAS 99/A/235 M. & M. v/ FINA, unpublished, at p. 14; CAS 2001/A/317 A. v/ FILA at p. 19.
23. The evidentiary standard required of the IOC in this regard is high: it is less than the criminal standard but it is more than the ordinary civil standard. It has been held that the objective elements of the offence of doping “*must be established to the comfortable satisfaction of the Court [i.e., the CAS] having in mind the seriousness of the allegation which is made*”: CAS OG 96/003 and CAS OG 96/004 K. and G. v/ IOC, unpublished; CAS 98/208 N., J., Y, & W. v/ FINA, Digest II, p. 234 ff.; CAS 99/A/234 and CAS 99/A/235, M. & M. v/ FINA, unpublished, at p. 14.
24. If the IOC meets its initial burden of proof, the principle of strict liability creates a presumption that a doping offence has been committed. The burden of proof then shifts to the athlete. An athlete may rebut this presumption by adducing clear evidence to demonstrate, for example, that the requisite procedure for collecting the sample was not followed, the chain of custody of the sample was broken, the sample containers were not properly sealed, or there were laboratory errors which call into question the results of the sample analysis: CAS 91/56 S. v/ FEI, Digest I, p. 93 at pp. 96-97; CAS 92/63 G. v/ FEI, Digest I, p. 115 at pp. 120-121; CAS 92/73 N. v/ FEI, Digest I, p. 153 at p. 157; CAS 2001/A/317 A. v/ FILA, unpublished.
25. It is not necessary for the IOC to prove either the intention of the athlete or the existence of fault on his part in order to establish that: (a) the athlete committed the offence of doping; and (b) the athlete should be disqualified from the competition at which he or she was under the influence of the prohibited substance. This approach is mandated by two important considerations. First, sporting fairness requires the disqualification of any athlete who is found to have competed in violation of structures that were respected by his or her competitors. Second, a requirement to prove intent would, as a practical matter, cripple the sports federations in their fight against doping: CAS 94/129, *USA Shooting v/ UIT*, CAS Digest, p. 187 at pp. 193-194; CAS 95/141, *C v/ FINA*, CAS Digest, p. 215 at p. 219; CAS 2001/A/317, *A. v/ FILA*.
26. Under the strict liability regime, the question whether an athlete intentionally or negligently committed the offence of doping becomes relevant only in regard to the assessment of the disciplinary sanctions which a sports federation may impose upon an athlete, e.g., suspension from future competition or fines. With respect to such disciplinary sanctions, it has been recognised that it is appropriate to consider the subjective elements of each case in deciding whether the sanction imposed is just and equitable: CAS 95/141 C. v/ FINA, Digest I, p. 215 at pp. 220-223; CAS 2001/A/317 A. v/ FILA, unpublished.
27. Since the present appeal relates exclusively to the IOC Executive Board Decision, the only matter in issue is whether the Appellant committed the offence of doping; if so, he must be

- disqualified from the Olympic Games in Sydney. Accordingly, in order to decide this appeal, it is only necessary for the Panel to determine whether the IOC has proven the objective elements of a doping offence and, if so, whether the Appellant has rebutted the resulting presumption.
28. By contrast, in the related FILA Appeal, the Panel must assess the appropriateness of FILA's two year suspension of the Appellant. In that context, the Panel will consider the subjective elements of the offence of doping, i.e., whether or not the Appellant intentionally or negligently committed the offence of doping. These subjective elements are not, however, relevant to the disposition of this appeal for the reasons set out above.
 29. Having found that the principle of strict liability, as defined above, applies to the offence of doping, the Panel will now consider the evidence on record in this appeal.
 30. The Panel finds that the IOC has demonstrated with the required degree of certainty that the Appellant provided Sample No. IOC A/B 403099. The doping control documents on record establish an unbroken chain of custody from the Appellant to ASDTL:
 - a) The Doping Control Official Record shows that the Appellant's urine sample was placed in two sample bottles marked Sample Code No. IOC A403099 and Sample Code No. IOC B403099 at the Doping Control Station;
 - b) The Doping Control Laboratory Advice Form shows that Sample No. IOC A/B 403099 was then placed in a Security Transport Bag bearing Seal No. A247341;
 - c) The Doping Control Transport Form shows that the Security Transport Bag bearing Seal No. A247341 was transported from the Doping Control Station to ASDTL;
 - d) The Doping Control Laboratory Advice Form shows that a representative of ASTDL verified: (i) the number of samples received in the Security Transport Bag bearing Seal No. A247341; (ii) the samples were sealed when received; (iii) the form and sample bottle numbers corresponded; and (iv) there were no discrepancies of any kind;
 - e) ASDTL's Sample Custody Form provides further confirmation of the date and exact time the Security Transport Bag bearing Seal No. A247341 was received by ASTDL; and
 - f) ASTDL's reporting letters sent 2 October 2000 and 5 October 2000 confirm that the seals on Sample Code No. IOC A403099 and Sample Code No. IOC B403099 were both correctly applied and intact at the time of opening.
 31. In addition to these doping control documents, the IOC has offered the supporting evidence of Ms. Vance, the Doping Control Manager for the Olympic Games in Sydney. While Ms. Vance was not personally involved in the Appellant's doping control procedure, she provided helpful and credible testimony relating to the steps which must be followed in each doping control procedure and the proper method for completing the doping control forms at issue in this appeal. Ms. Vance's testimony at the hearing confirmed that the doping control forms on record had been completed properly and that there was no evidence of any irregularities in the collection or transportation of Sample No. IOC A/B 403099, and the Panel so finds.

32. The Panel also finds that ASTDL's reporting letters sent 2 October 2000 and 5 October 2000, and supporting laboratory reports, show and confirm the presence in the Appellant's body of metabolites of the prohibited substances nandrolone, 19-norandrostenediol or 19-norandrostenedione (19-norandrosterone and 19-noretiocholanolone) above the IOC threshold of 2 ng/ml for males.
33. In making this finding, the Panel relies upon Chapter II, Article 4.2 of the OMAC which provides as follows:
 2. *Evidence obtained from metabolic profiles and/or isotopic ratio measurements may be used to draw definitive conclusions regarding the use of anabolic androgenic steroids.*
34. Given that the Appellant has not specifically challenged the testing procedures followed by ASDTL, the Panel also relies upon Chapter III, Article 2 of the OMAC which provides the following:

Article 2

Accredited laboratories are presumed to have conducted testing and custodial procedures in accordance with prevailing and acceptable standards of scientific practice. This presumption can be rebutted by convincing evidence to the contrary, but the accredited laboratory shall have no onus in the first instance to show that it conducted the procedures other than in accordance with its customary practice.
35. Contrary to the submission of the Appellant, the Panel finds that the IOC is not required to prove, as one of the objective elements of the offence of doping, that the prohibited substance detected in an athlete's body "objectively" increases performance.
36. Indeed, Chapter II, Article 4.4 of OMAC specifically provides the following:
 4. *The success or failure of the use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was used or attempted for the offence of doping to be considered as consummated.*
37. For the above reasons, the Panel concludes that the IOC has satisfied its initial burden of proving the objective elements of the offence of doping. Accordingly, applying the principle of strict liability, a presumption exists that the Appellant committed a doping offence under Chapter II, Article 2.2 of the OMAC. The Panel must next consider whether this presumption has been rebutted by the Appellant.
38. The Appellant alleges that the doping control documents on record reveal discrepancies in regard to the volume, pH level and specific gravity recorded with respect to his Sample. On the basis of these alleged discrepancies, the Appellant maintains there are sufficient grounds for doubting that he in fact provided.
39. In the Panel's view, there is no evidence whatsoever of any material discrepancies in the information recorded on the doping control documents in regard to Sample No. IOC A/B 403099.

40. With respect to the alleged discrepancies, the Panel notes that the doping control documents at issue record the following information:
- a) The Doping Control Official Record records in a shaded box entitled “Partial Sample” that the Appellant provided a partial urine sample of 50 ml at 20:25 hours on 30 September 2000. Immediately below the shaded box entitled “Partial Sample”, it is recorded that the Appellant provided a further urine sample at 20:50 hours on 30 September 2000. The total volume of the urine sample is not indicated.
 - b) ASDTL’s reporting letter sent 2 October 2000 records that the volume of the A Sample, Sample No. IOC A403099, was 85 ml at the laboratory and that no volume (“N/A”) was listed on the Doping Control Official Record (the “form”).
 - c) ASDTL’s reporting letter sent 5 October 2000 records that the volume of the B Sample, Sample No. IOC B403099, was 60 ml.
41. The Panel finds no discrepancies of any kind in regard to the volumes of urine recorded on these three doping control documents. Each of these documents records the volume of a different portion of Sample No. IOC A/B 403099; none of them records the total volume of Sample No. IOC A/B 403099.
42. The Doping Control Official Record must be read in light of the following provisions of Appendix C to the OMAC:

3. Sample Taking Procedure

[...]

3.4 *The competitor shall select a collection vessel, visually check that it is empty and clean, proceed to the toilet and urinate a minimum of 75 ml into the collection vessel under the observation of the Doping Control Officer who shall be of the same gender as the competitor.*

[...]

3.11 *If the competitor has produced less than the requested urine volume of 75 ml, the competitor shall select a partial sample kit and shall pour the urine from the collection vessel into the bottle. Then the competitor shall close the bottle and check that no leakage occurs.*

The competitor shall check that the code numbers on the bottle and the partial sample container are the same. Next, the urine volume and code number shall be recorded on the Doping Control Official Record and the competitor shall confirm this by signing the Doping Control Official Record. Finally, the competitor shall insert the bottle into the partial sample container and close it completely. The Doping Control Officer shall verify that this is hermetically closed. The Doping Control Officer may, with the agreement of the competitor, assist with the procedures outlined in this paragraph.

The competitor shall return to the waiting room with the partial sample container until he/she is able to deliver urine again. When the competitor is ready to deliver a further urine sample, he/she shall return to the consulting area with the partial sample container, which shall be handed to the Doping Control Officer who shall check that the partial sample container is intact and that the code number corresponds to that entered in the Doping Control Official Record.

The competitor shall then select a new collection vessel and enter the toilet where he/she shall urinate. The competitor shall return to the consulting area, open the partial sample container and pour the content into the

collection vessel. If the combined urine volumes are less than 75 ml, he/she shall select a new partial sample container and proceed according to the procedure outlined in this paragraph.

When the combined volumes total at least 75 ml, the urine sample shall be processed in accordance with the procedure outlined in paragraphs 3.5 to 3.9 above.

43. The express terms of the Doping Control Official Record, Paragraph 3.11 of Appendix C to the OMAC, and Ms. Vance's testimony regarding the partial sample procedure demonstrate that the Doping Control Official Record is intended to record, and does indeed record, only the volume of any partial urine sample provided by an athlete, and not the total volume of urine collected. The Panel accepts Ms. Vance's explanation that the Doping Control Official Record does not provide any space for recording the total volume of urine collected because there is no requirement to do so under the OMAC. Under Paragraphs 3.4 and 3.11 of Appendix C to the OMAC, the only relevant requirement is that the athlete provide a minimum urine sample of 75 ml.
44. The evidence compels the conclusion that the total volume of the Appellant's urine sample was at least 75 ml, as required under the OMAC. Taken together, ASDTL's reporting letters sent 2 October 2000 and 5 October 2000 demonstrate clearly that the total volume of Sample No. IOC A/B 403099 was 145 ml (the A Sample was reported to be 85 ml and the B Sample was reported to be 60 ml). Moreover, the volumes of urine, recorded on ASDTL's two reporting letters are entirely consistent with each other and with the Doping Control Official Record.
45. Given these findings, the Panel must reject the Appellant's submission that there are discrepancies or contradictions in the volumes of urine recorded on the doping control documents completed in regard to Sample No. IOC A/B 403099. Moreover, even if there had been some minor irregularity in the notation of volumes of urine, the CAS ad hoc Division has held that such an irregularity cannot reasonably be considered to have affected the results of an otherwise valid test (Chapter VI, Article 5 of the OMAC): CAS OG 00/011 Raducan v/ IOC, CAS Awards – Sydney 2000, p. 111 at p. 118.
46. Turning to the alleged discrepancies in the pH level and specific gravity of Sample No. IOC A/B 403099, the Panel notes that the Doping Control Official Record reports a pH level of 6.0 and specific gravity of 1.015 whereas ASDTL's reporting letter sent 2 October 2000 and supporting laboratory reports record a pH level of 5.3 and specific gravity of 1.013.
47. However, the Panel considers that the expert evidence of Prof. Cowan accounts for these differences in the pH level and specific gravity reported for Sample No. IOC A/B 403099. In his written report, Prof. Cowan explained that the minor differences between the measurements made at collection and in the laboratory are entirely attributable to the use of more sensitive measurement methods and equipment in the laboratory. In other words, the differences between the figures reported in the Doping Control Official Record and in ASDTL's 20 October 2000 letter are not the result of any difference in the actual pH level and specific gravity of Sample No. IOC A/B 403099, but, rather, in the level of precision of the scientific techniques used for measuring these factors. The Appellant has offered no evidence

or argument to counter this explanation and, accordingly, Prof. Cowan's evidence on this point stands unchallenged.

48. The Panel finds that the minor differences in the pH level and specific gravity reported on the doping control documents do not cast any doubt on the chain of custody or the true origin of the Sample. Moreover, it should be noted that all of the measurements of the pH level and specific gravity recorded for the Sample fall within the specifications prescribed under Paragraph 3.6 of Appendix C to the OMAC:

3.6 The Doping Control Officer shall measure the specific gravity and pH of the urine left in the collection vessel. The urine pH should not be less than 5 and not greater than 7, and the urine should have a specific gravity of 1.010 or higher. If the sample does not meet these specifications, further samples may be required by the IOC Medical Commission representative.

49. For the above reasons, the Panel concludes that the volume, pH level and specific gravity recorded on the doping control documents do not raise any valid ground for doubting that the Appellant provided Sample No. IOC A/B 403099.
50. As a further ground of appeal, the Appellant submits that the IOC is not entitled to rely upon the results of the analysis of Sample No. IOC A/B 403099 due to the fact that he was not provided with personal notice of the opening and analysis of the B sample.
51. According to the Appellant, he was denied the opportunity to be present at the opening and analysis of the B sample as a result of this failure to provide him with personal notice. Consequently, he argues that there was a serious procedural irregularity under the terms of Chapter VI, Article 5 of the OMAC:

Article 5:

Minor irregularities, which cannot reasonably be considered to have affected the results of otherwise valid tests, shall have no effect on such results. Minor irregularities do not include the chain of custody of the sample, improper sealing of the container(s) in which the sample is stored, failure to request the signature of the athlete or failure to provide the athlete with an opportunity to be present or be represented at the opening and analysis of the "B" sample if analysis of the "B" sample is requested.
[emphasis added]

52. In the opinion of the Panel, Paragraph 5.5 of Appendix C to the OMAC establishes a specific and mandatory procedure to be followed in providing athletes with an opportunity to be present or represented at the opening and analysis of the B sample:

5.5 Should the analysis of the A samples indicate a violation of the IOC doping control regulations, the Chairman of the Medical Commission shall immediately inform in writing the Chef de Mission of the Delegation of the competitor, or his representative. The B sample will be analysed, if such analysis is requested, at a time determined by the IOC Medical Commission. Such time shall be recorded in the communication to the Chef de Mission.

53. The Panel finds that the IOC Medical Commission's letter to the German Chef de Mission dated 2 October 2000 complied with the procedure established under Paragraph 5.5 of

Appendix C to the OMAC. The Panel notes that this letter included the following statement: “*The delegation, including the athlete, is invited to witness the opening of the B sample at: 11 am on October 4th 2000*”.

54. Although the Appellant is critical of the procedure contemplated in Paragraph 5.5 of Appendix C to the OMAC, he has not pointed to any provision of the OMAC, or any other legal authority, in support of his submission that he was entitled to personal notice of the opening and analysis of the B sample.
55. The Appellant has, on the other hand, called into question the authority of the German Chef de Mission to accept notice of the opening and analysis of the B sample on his behalf after the closing of the Olympic Games on 1 October 2000.
56. It is common ground between the Parties that the general authority of the Chef de Mission over competitors participating in the Olympic Games is derived from Rule 41.2.1 of the Olympic Charter:

2 *Chefs de Mission*

2.1 *During the period of the Olympic Games, the competitors, officials and other team personnel of an [sic] NOC are placed under the responsibility of a chef de mission, appointed by his NOC and whose task – in addition to any other functions assigned to him by his NOC – is to liaise [sic] with the IOC, the IFs and the OCOG.*

57. In the context of this appeal, the issue is not the general authority of the Chef de Mission over competitors but rather the effectiveness of a notice given to the Chef de Mission in relation to a doping control procedure conducted under the OMAC. As noted above, Paragraph 5.5 of Appendix C to the OMAC stipulates that notice of the opening and analysis of the B sample is to be provided to the Chef de Mission (or his representative). The OMAC does not contemplate any other procedure for providing notice after the closing of the Olympic Games. It follows, as a matter of construction, that notice to the Chef de Mission is effective under the OMAC and provides the athlete with “*an opportunity to be present or be represented*” at the opening and analysis of the B sample, whether or not such notice is given before or after the closing of the Olympic Games.
58. The Panel finds support for this interpretation of the OMAC in the following passage from the IOC’s “Explanatory Memorandum concerning the application of the Olympic Movement Anti-Doping Code” dated 9 December 1999 at p. 5:

The expressions “during the Olympic Games” and “authority responsible” are not defined [in the OMAC]. “During the Olympic Games” means the period starting with the official opening of the Olympic Village (September 2, 2000 for the Games in Sydney), whether or not the athlete is there, and ending with the closing ceremony of the Games or, as the case may be, with the end of the control procedures put in place during the Games, including the use of sanctions or any appeals. [emphasis added]

59. This passage demonstrates that the IOC drafters intended that the procedures established under the OMAC, including the procedure for giving notice to the Chef de Mission under Paragraph 5.5 of Appendix C to the OMAC, would continue to apply after the closing of the Olympic Games until the end of all doping control procedures initiated during the Olympic Games.
60. There is no dispute that the Appellant's doping control procedure was initiated during the Olympic Games in Sydney. The Panel thus finds that the letter sent by the IOC Medical Commission to the German Chef de Mission in conformity with Paragraph 5.5 of Appendix C to the OMAC constituted valid and effective notice to the Appellant, notwithstanding the fact that it was sent after the closing of the Olympic Games.
61. Based upon this finding, the Panel concludes that the Appellant was provided with an opportunity to be present and represented at the opening and analysis of the B sample and, as a result, that there was no procedural irregularity of any kind, whether under the terms of Chapter VI, Article 5 of the OMAC or otherwise.
62. As a final matter, and although not necessary for the determination of this appeal, the Panel wishes to comment on the question of whether the Appellant was represented at the opening and analysis of the B sample. In his various submissions, the Appellant maintains that he did not authorise Dr. Huber (the German NOC's team doctor) or Dr. Rauhut (the German national wrestling team doctor) to represent him at this procedure. Whether or not Dr. Huber or Dr. Rauhut had formal authority to represent the Appellant, the Panel nonetheless considers that the Appellant's interests were protected by the presence of these individuals. This is confirmed by the fact that both Dr. Huber and Dr. Rauhut reviewed and signed ASDTL's B Sample Verification Form, which records the following: (a) the sample container was sealed and the seal was correctly applied and intact; (b) the seal number was IOC B 403099 and corresponded to the code number in the corresponding form; (c) the bottle was tightly closed and contained sufficient urine to continue with the analysis; and, of particular importance, (d) a number of additions were made to the Appellant's previous declaration on the Doping Control Official Record with respect to the precise medications taken during the three days prior to the doping control. It is quite clear that these additions to the Appellant's "declaration of medications" could only have been made by Dr. Huber and/or Dr. Rauhut and that they did so with the intention of protecting the interests of the Appellant.
63. For all these reasons, the Panel concludes that there was no procedural irregularity in regard to the opening and analysis of the B sample such as to preclude the IOC from relying upon the results of the analysis of Sample No. IOC A/B 403099.
64. In addition to the above procedural arguments, the Appellant has sought to overturn the IOC Executive Board Decision on the ground that the detection of 19-norandrosterone above the threshold of 2 ng/ml for males does not provide scientifically reliable evidence of an exogenous administration of nandrolone. The Panel is unable to accept this submission for the following reasons.

65. First, as noted above, the Panel is required under Article R58 of the CAS Code to decide this appeal in accordance with the OMAC and, to the extent it is relevant, the law of Switzerland.
66. Substitute Appendix A of the OMAC establishes a clear and unambiguous rule that IOC-accredited laboratories must report any urinary concentration of 19-norandrosterone above 2 ng/ml in males as a positive finding of a prohibited substance, i.e., nandrolone, 19-norandrostenediol, 19-norandrostenedione or related substances.
67. The Panel's mandate, is adjudicative: to interpret and apply the doping control rules established by the OMAC. The Panel does not have competence to amend or strike down these doping control rules, provided that they are consistent with the mandatory provisions of Swiss law.
68. The Appellant has made no suggestion that the IOC threshold for 19-norandrosterone is inconsistent with or invalid under Swiss law. The Panel therefore has no authority to substitute its views for those of the IOC when it established this doping control rule. The Appellant's challenge of the scientific reliability of the IOC threshold for 19-norandrosterone is thus legally inadmissible.
69. Second, and in any event, the Panel is satisfied, subject to the reservations noted below, that the IOC threshold for 19-norandrosterone of 2 ng/ml for males provides scientifically reliable proof of an exogenous administration of nandrolone.
70. The Appellant's challenge to the scientific reliability of the IOC threshold for 19-norandrosterone is primarily based upon the expert opinion of Prof. Franke. In essence, Prof. Franke expressed the view that there has been insufficient scientific study on the basis of which to exclude the possibility that concentrations of 19-norandrosterone above 2 ng/ml could occur endogenously. Prof. Franke did not, however, refer the Panel to any scientific study which specifically casts doubt on the reliability of the IOC threshold.
71. On the other hand, Prof. Cowan testified that the IOC threshold for 19-norandrosterone is fully supported by: (a) the published studies of Le Bizec and Dehennin; and (b) the experience of IOC-accredited laboratories in doping control procedures carried out in connection with recent Olympic Games and other sporting events.
72. Without putting in doubt the competence of Prof. Franke, the Panel must accept Prof. Cowan's evidence that there is scientific support for the IOC threshold. From a purely scientific perspective, there may always exist a possibility that concentrations of 19-norandrosterone above 2 ng/ml could occur endogenously. It may well be that further indeed better studies should be undertaken. However, absent expert evidence to the contrary, the Panel has no basis for questioning the reliability of the studies conducted by Le Bizec and Dehennin or the experience of the IOC-accredited laboratories.
73. In addition to the evidence of Prof. Franke, the Appellant has referred to studies by Debruykere and Graf-Baumann which apparently found concentrations of 19-

norandrosterone above 2 ng/ml in a significant number of athletes. The Appellant did not, however, file these studies with the Panel or tender any expert evidence in relation to them. As a consequence, the Panel cannot place any weight on these studies indeed, all the less so in view of Prof. Cowan's evidence that in a subsequent peer-reviewed publication, Debruykere himself attributed his initial findings of high concentrations of 19-norandrosterone to the ingestion of contaminated meat .

74. For all of the above reasons, the Panel rejects the Appellant's submission that the IOC threshold for 19-norandrosterone is not scientifically reliable.
75. At this point, the Panel will address the Appellant's submission that Prof. Cowan, the Respondent's expert, was less than fully independent
76. During the hearing, it was revealed that Prof. Cowan had been personally involved in the doping control procedure at issue in this appeal. Prof. Cowan testified that he had been a Member of the IOC Medical Commission at the Olympic Games in Sydney and that, in this capacity, he had personally reviewed and approved ASDTL's reporting letter sent 2 October 2000 in regard to the Appellant's A sample.
77. While the Appellant did not argue in this appeal that Prof. Cowan's personal involvement in the doping control procedure rendered his evidence inadmissible, he submitted that the Panel should take Prof. Cowan's personal involvement into account in assessing the weight to be accorded to his evidence.
78. In the opinion of the Panel, Prof. Cowan is a qualified experts whose evidence was balanced, fair, and based upon his own professional opinion. Moreover, it appears that his role in the doping control procedure was quite limited. The Panel perceives no grounds for inferring that he has a personal or professional interest in the outcome of this appeal. Accordingly, the Panel is prepared to rely upon the expert evidence of Prof. Cowan, despite his involvement in the doping control procedure.
79. The Panel feels compelled, however, to remark that the IOC and sports federations should make every effort in future cases before the CAS to ensure that their expert evidence is adduced by means of experts who have no ties to the parties or the doping control procedure at issue in the appeal.
80. Although the Panel accepts Prof. Cowan's expert opinion regarding the reliability of the IOC threshold, it feels compelled to observe that the scientific evidence in support of this doping control rule appears less than overwhelming. In his written expert report and testimony at the hearing, Prof. Cowan was only able to identify two published studies which support the scientific reliability of the IOC threshold for 19-norandrosterone. Beyond these two studies, Prof. Cowan relied upon the experience of IOC-accredited laboratories in analysing the results of doping control procedures, but acknowledged that these IOC-accredited laboratories have not published this information and that it is not otherwise in the public domain. In view of the serious consequences of a doping conviction for an athlete, the Panel encourages the IOC

and sports federations to commission further scientific studies in regard to the detection of the exogenous administration of nandrolone. The results of these studies should be publicly available. The need for further study seems particularly pressing in view of the on-going debate regarding the possible effects of contaminated food, food supplements and medication on the level of 19-norandrosterone detected in an athlete's body, a matter which shall be considered below.

81. Equally, the Panel acknowledges that the IOC and other sports federations face an extremely difficult task in attempting to keep pace with the imagination and resources of cheats who seek to obtain an unfair competitive advantage in the increasingly lucrative world of sport. The Panel recognises that the IOC and sports federations must enact doping control rules based upon the best available scientific information and even if this information is, at times, rather limited.
82. In sum, on the basis of the evidence adduced in this case, the Panel is satisfied that the IOC threshold for 19-norandrosterone of 2 ng/ml for males, in the current state of knowledge, provides positive and reliable evidence of an exogenous administration of nandrolone. The Panel notes, in closing this section, that the threshold for 19-norandrosterone of 2 ng/ml has been enforced in recent CAS awards: e.g., CAS 99/A/235 M. & M. v/ FINA, unpublished; CAS OG 00/015 Melinte v/ IAAF, Digest II, p. 691.
83. The Appellant has also argued that the IOC threshold for 19-norandrosterone is not a reliable indicator in cases of extreme dehydration followed by rapid rehydration.
84. This argument was not the subject of any expert evidence. The only evidence on the record establishes that the IOC follows a specific protocol in order to account for the possible effects of dehydration. In his written report, Prof. Cowan explained that the IOC actually raises the threshold for 19-norandrosterone when the specific gravity of the urine sample exceeds 1.020. In this case, it was not necessary to raise the threshold because the specific gravity of the Appellant's urine sample was not at that level.
85. Contrary to the theory advanced by the Appellant, Prof. Cowan stated his expert view that the effect of drinking a large quantity of water after extreme exertion would be more likely to decrease, rather than increase, the concentration of 19-norandrosterone.
86. Based upon the evidence, the Panel finds that the Appellant's alleged dehydration and rapid rehydration could not account for the elevated concentration of 19-norandrosterone detected in Sample No. IOC A/B 403099.
87. In addition to challenging the reliability of the IOC threshold for 19-norandrosterone itself, the Appellant argues that ASDTL's laboratory reports for Sample No. IOC A/B 403099 fail to establish the presence of the metabolite 19-norepiandrosterone (19-Nea).
88. According to the Appellant, it is necessary to establish the presence of three urinary metabolites in order to make a conclusive finding of an exogenous administration of

nandrolone: (a) 19-norandrosterone (19-NA); (b) 19-norethiocholanolone (19-NE); and (c) 19-norepiandrosterone (19-Nea).

89. Once again, the Appellant has offered no expert evidence to support his argument. Accordingly, the Panel accepts the uncontroverted expert evidence of Prof. Cowan, that the absence of 19-norepiandrosterone (19-Nea) is unremarkable and that the detection of only one of the above-mentioned metabolites constitutes clear evidence of an exogenous administration of nandrolone.
90. This expert evidence is also consistent with a recent decision of a CAS ad hoc Division, where it was found that not all metabolites of nandrolone may be present in an athlete's urine following doping and that it is only necessary to establish the presence of one metabolite in order to prove a doping offence: CAS OG 00/015 Melinte v/ IAAF, Digest II, p. 691 at pp. 694-695.
91. Thus, the Panel rejects the Appellant's argument that the IOC must establish the presence of all three metabolites of nandrolone in order to prove an exogenous administration of this prohibited substance.
92. The Appellant submits, without however adducing any expert or other evidence, that there is a 5% probability that ASTDL's analyses of Sample No. IOC A/B 403099 resulted in a false positive and that, based purely on this statistical ground, the analysis of sample No. IOC A/B 403099 should be found to be unreliable.
93. The Panel finds the Appellant's statistical argument, unsubstantiated by any expert or other evidence, to be unpersuasive. The mere statistical possibility of a false positive cannot, of itself, in firm the concrete evidence of doping which the Panel has found.
94. Even if there may be some theoretical possibility of a false result in the analysis of the A or B sample, it is extremely improbable that the exact same analytical error would occur in the analysis of *both* samples. In this case, ASTDL's analysis of the A sample and the B sample both establish very elevated concentrations of 19-norandrosterone. Taken together, the results of these two analyses virtually eliminate the risk of a false positive in one or both of them.
95. As a final ground of appeal, the Appellant submits that the elevated concentration of 19-norandrosterone detected in Sample No. IOC A/B 403099 may have been caused either by injuries or contaminated food supplements or medication.
96. With respect to the possible impact of injuries, the Panel accepts the Appellant's statement that he suffered a fractured nose and a bruised testicle shortly before the gold medal match. Nevertheless, he failed to demonstrate that these injuries could account for the high concentration of 19-norandrosterone found in the A and B samples. While Prof. Franke speculated that a contusion of the testicles could theoretically cause a "*flash*" or "*spike*" in the endogenous production of 19-norandrosterone up to 20 ng/ml, he admitted that there were no scientific studies supporting this theory.

97. Prof. Franke's evidence on this issue amounts to an unverified hypothesis which cannot rebut the IOC's case against the Appellant. In this connection, the Panel notes Prof. Cowan's testimony that 19-norandrosterone does not typically exceed the threshold of 2 ng/ml even in persons who are found to have a testicular tumour.
98. Furthermore, the Panel does not accept that Prof. Franke's hypothesis is corroborated by the fact that the Appellant did not test positive for nandrolone in other doping control procedures conducted immediately before and immediately after the Olympic Games. Prof. Cowan testified, and the Panel accepts, that nandrolone and its precursors are very rapidly metabolised and eliminated from the body. Accordingly, the results of the other doping control procedures cannot be given any weight in assessing the cause of the elevated concentration of 19-norandrosterone detected in the Appellant's urine at the Olympic Games immediately after the gold medal match.
99. Turning to the issue of contaminated food supplements and medication, the Panel must first emphasise that the Appellant has adduced no evidence that he consumed such products. The Appellant's case can be contrasted in this regard with another recent nandrolone case in which the athlete went to some lengths to demonstrate that he had consumed a specific nutritional supplement and that this supplement was contaminated with nandrolone precursors: CAS 2001/A/317 A. v/ FILA. The Appellant's failure to establish the factual basis for his submissions in regard to the impact of contaminated food supplements or medication is fatal to this argument.
100. In any event, the Panel must observe that, having been found guilty of committing a doping offence, the fact that the Appellant may have inadvertently consumed products contaminated with a prohibited substance is legally irrelevant. Even if it were found that he did accidentally consume such products, this would not, in and of itself, rebut the presumption of guilt.
101. This position is consistent with the admonition set out in Chapter I, Article 3 of the OMAC:
- Article 3*
Notwithstanding the obligations of other Participants to comply with the provisions of this Code, it is the personal responsibility of any athlete subject to the provisions of this Code to ensure that he/she does not use or allow the use of any Prohibited Substance or any Prohibited Method.
102. Nevertheless, the Panel wishes to record its concern arising from the on-going debate regarding the possible impact of contaminated food, food supplements and medication on positive findings of nandrolone. The Panel urges the IOC and sports federations to investigate this matter further and do everything possible to educate athletes about the risks associated with the consumption of certain products, in particular food supplements.
103. The Panel has concluded that the Appellant committed a doping offence under Chapter II, Article 2.2 of the OMAC during the freestyle wrestling competition held at the Olympic Games in Sydney.

104. Rule 25, Paragraph 2.2.1 of the Olympic Charter provides that the IOC Executive Board has the authority to impose the following sanctions:

2. *The measures or sanctions which may be taken by the Session or Executive Board are: [...]*

2.2 *In the context of the Olympic Games:*

2.2.1 *with regard to individual competitors and teams: temporary or permanent ineligibility or exclusion from the Olympic Games; in the case of exclusion, any medals or diplomas obtained shall be returned to the IOC (Executive Board); [...]*

105. For any case of doping during a competition, Chapter II, Article 3.3 of the OMAC establishes the following mandatory sanction:

3. *Any case of doping during a competition automatically leads to invalidation of the result obtained (with all of its consequences, including forfeit of any medals and prizes), irrespective of any other sanction that may be applied, subject to the provisions of point 4 of this article [which is irrelevant as it deals with a competitor who is a member of a team].*

106. In view of the mandatory language of the OMAC, the Panel has no discretion to modify the sanction imposed by the IOC Executive Board Decision.

The Court of Arbitration for Sport hereby rules:

1. The appeal filed by L. on 7 November 2000 against the decision made by the Executive Board of the International Olympic Committee dated 23 October 2000 is dismissed.
2. (...).