

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

UNITED STATES ANTI-DOPING AGENCY (USADA),

Claimant

and

GREG PIZZA,

Respondent

Re: AAA Case No. 01-15-0006-1251

AWARD OF ARBITRATORS

Pursuant to the American Arbitration Association's (AAA) Commercial Arbitration Rules as modified by the American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes as contained in the Protocol for Olympic and Paralympic Movement Testing Effective as revised January 1, 2015 (the **USADA Protocol**), pursuant to the Ted Stevens Olympic and Amateur Sports Act, 36 USC 22501, et seq. (the **Act**), a hearing was held in San Diego, California on June 30, 2016, before arbitrators, James H. Carter, Alan Rothenberg and Maidie Oliveau (the **Panel**) with Claimant's legal counsel in attendance, Respondent and his representative in attendance and offering argument and evidence. The Panel does hereby AWARD as follows:

I. THE PARTIES

1. Claimant, USADA, as the independent anti-doping agency for Olympic Sports in the United States, is responsible for conducting drug testing and for adjudication of any positive test results and other anti-doping violations pursuant to the USADA Protocol. William Bock, Esq., of the law firm Kroger, Gardis and Regas, who is also General Counsel of USADA, acted as USADA's representative, appeared and represented USADA along with Jeffrey T. Cook, Director of Legal Affairs of USADA.

2. Respondent, Greg Pizza, is a 62-year old Real Estate Agent serving clients in the San Diego, California area since 1978, and an amateur runner who has regularly competed since 2002 in masters USA Track & Field (USATF) sprint races and periodically in international races. He is a member of the 60-year-old Southern California Striders Track Club. Mr. Pizza was represented at the hearing by Amanda Scotti, Publisher of *National Masters News* (collectively, Claimant and Respondent shall be referred to as "the parties" and individually a "party").

II. JURISDICTION AND APPLICABLE LAW

A. Jurisdiction

3. The Panel has jurisdiction over this doping dispute pursuant to the Act §220522 because this is a controversy involving Respondent's opportunity to participate in national and international competition. The Act states, in relevant part, that:

"An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete, coach, trainer, manager, administrator or official to participate in amateur athletic competition, upon demand of the corporation or any aggrieved amateur athlete, coach, trainer, manager, administrator or official, conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation's constitution and bylaws. . . ."

4. Under its authority to recognize an NGB, the United States Olympic Committee ("USOC") established its National Anti-Doping Policies, the current version of which is effective as of January 1, 2015 (**USOC Policies**), which, in relevant part, provide:

". . . NGBs shall not have any anti-doping rule which is inconsistent with these Policies or the USADA Protocol, and NGB compliance with these Policies and the USADA Protocol shall be a condition of USOC funding and recognition."

5. Regarding Respondent, the USOC Policies provide:

". . . each NGB shall be responsible for informing Athletes and Athlete Support Personnel in its sport of these USOC National Anti-Doping Policies and the USADA Protocol which is incorporated into the agreement between the USOC and USADA. By virtue of their membership in an NGB, license from a NGB, participation in an Event or Competition organized or sanctioned by an NGB, selection for a national team, receipt of benefits from an NGB or the USOC or by virtue of their inclusion in the USADA RTP, Participants agree to be bound by the USOC National Anti-Doping Policies and the USADA Protocol. . . ."

6. In compliance with the Act, the USADA Protocol, Article 17, provides that hearings regarding doping disputes "will take place in the United States before the American Arbitration Association ("AAA") using the [USADA Protocol]."
7. Neither party disputed the Panel's jurisdiction and in fact both parties consented to it and participated in these proceedings without objection.

B. Applicable Law

8. USADA has results management authority and the USADA Protocol and the World Anti-Doping Agency Code (the **WADA Code**) govern this case. Respondent, when he signed the Doping Control Official Record (**Doping Control Record**) as part of providing his sample on July 25, 2015 agreed to "submit to the results management authority and process of USADA, including arbitration under the USADA Protocol for Olympic and Paralympic Movement Testing".
9. The rules related to the outstanding issues in this case are the International Association of Athletic Federations rules on anti-doping, which implement the World Anti-Doping Agency Code (the **WADA Code**). As the IAAF rules relating to doping are virtually identical to the WADA Code, the applicable WADA Code provisions (version 2015) will be referenced throughout this Award. The relevant WADA Code provisions are as follows:

2.2 Use or Attempted Use by An Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

* * *

3.1 Burdens and Standards of Proof

...Where the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

* * *

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substance or Prohibited Methods

The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6.

10.2.1 The period of Ineligibility shall be four years where:

10.2.1.1 *The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*

10.2.2 *If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.*

10.2.3 *As used in Articles 10.2 and 10.3, the term 'intentional' is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.*

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10.4 *Elimination of the Period of Ineligibility where there is No Fault or Negligence*

If an Athlete or other Person establishes in an individual case that he or she bears No Fault of Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

10.5 *Reduction of the Period of Ineligibility Based on No Significant Fault or Negligence*

10.5.2 *Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1*

If an Athlete or other Person establishes in an individual case ... that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable.

* * *

DEFINITIONS

Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's ... experience, whether the Athlete ... is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's ... departure from the expected standard of behavior. Thus, for example, the fact that an

Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.

No Fault or Negligence: The Athlete or Other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. ...

No Significant Fault or Negligence: The Athlete or Other Person's establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation.

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10.11 Commencement of Ineligibility Period

Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

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10.11.2 Timely Admission

Where the Athlete or other Person promptly (which, in all Events, for an Athlete means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by the Anti-Doping Organization, 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. In each case, however, where this Article is applied the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. This Article shall not apply where the period of Ineligibility already has been reduced under Article 10.6.3.

10.11.3 Credit for Provisional Suspension or Period of Ineligibility Served

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10.11.3.2 If an Athlete or other Person voluntarily accepts a Provisional Suspension in writing from an Anti-Doping

Organization with results management authority and thereafter respects the Provisional Suspension, the Athlete or other Person shall receive a credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed.

USOC Policies, Section 13.1

The USOC has determined that compliance with the Code, the International Standards adopted by WADA and other applicable anti-doping rules is most likely to be achieved if Athletes and certain Athlete Support Personnel participate in specially formulated education programs to facilitate their understanding of the applicable anti-doping rules and of their responsibilities under those rules. Such educational programs should focus on prevention, include the harm to one's health associated with doping and encourage clean sport.

III. FACTUAL BACKGROUND/PROCEDURAL HISTORY

A. Procedural History

10. On July 25, 2015, after finishing 3rd in the 100-meter dash in the M60 category at the USATF Masters National Track & Field Championships, the Respondent was selected for doping control. On his Doping Control Record, the Respondent declared only "multivitamins 6 tablets." His sample yielded an adverse analytical finding for elevated testosterone/epitestosterone ratio greater than 4:1, consistent with the administration of a steroid of exogenous origin.
11. On September 11, 2015, USADA notified the Respondent of his adverse analytical finding and imposed a provisional suspension. On September 15, 2015, the Respondent signed an acceptance of the laboratory findings and waived his right to have his B sample analyzed. Respondent considered this an admission of the anti-doping rule violation as the signed acceptance states: "I do not contest the Laboratory's finding that my Sample showed evidence of the administration of an anabolic agent, constituting the finding of a prohibited substance in my Sample."
12. Respondent then submitted a Therapeutic Use Exemption (**TUE**) application with a request for that application to have retroactive effect. While the TUE application was being considered, reconsidered and finally rejected, with Respondent refusing to take any of the steps required by USADA to qualify for a TUE, Respondent also filed an application for a Recreational Competitor TUE (**RCTUE**), which was ultimately also denied.
13. Respondent requested an appeal to the American Arbitration Association on December 15, 2015, of the anti-doping rule violation sanction.
14. Respondent's prehearing brief requested the following relief:
 - a. That he be found not at fault or at no significant fault for the use of testosterone replacement supplements and positive test results in competition.

- b. That he receive no sanction from USADA or be given a completed sanction from the date of his testing, July 25, 2015.
 - c. That he be granted a TUE or RCTUE for supplemental testosterone replacement therapy.
15. Upon motion by USADA, the Panel determined on June 15, 2016, to limit the issues under consideration in this appeal to the finding of a doping violation and any consequent period of ineligibility or sanction only. The Panel denied the request with respect to Respondent being granted a TUE or RCTUE since his appeal related only to the sanction.
16. Respondent also made a claim in his pre-hearing brief with respect to the grant of the TUE or RCTUE being a reasonable accommodation under the Americans with Disabilities Act. He withdrew this aspect of his claim at the hearing on June 30, 2016.
17. Accordingly, the issue before this Panel is to determine the appropriate sanction applicable to the Respondent's anti-doping rule violation under the Code.

B. Factual Background

18. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, we refer in this Award only to the submissions and evidence considered necessary to explain the Panel's reasoning.
19. The Respondent has been participating in the sport of masters track and field since 2002 and is a member of the Southern California Striders Track Club. He is an active competitor, having run in 14 races in 2015, prior to notice of the positive test result, including the USATF National Masters Combined Event Championships in San Antonio, Texas, where he placed 1st in the 100-meter out of 11 competitors and the USATF National Masters Track & Field Championships in Jacksonville, Florida where he placed 3rd in the 100-meter out of 14 competitors, 4th in the 200-meter out of 8 competitors and 1st in the 4 x 100-meter relay. Claimant testified that medals awarded to masters athletes should not be given significant weight because in many competitions there are so few entering in a particular event that in many cases everyone receives a medal.
20. The testimony of Respondent and his witnesses was that the masters events are about fun, exercise, recreation and camaraderie more than just competition, though the competition and regulations are an important element. The masters athletes have no qualifying standards for national championship meets, they just sign up. They compete in these events at their own expense, for no prize money.
21. Respondent was prescribed testosterone in tablet form by a naturopath he has consulted starting in 2013, for complaints relating to erectile dysfunction, fatigue and depression. Medical records show he was first prescribed the hormones Chorionic Gonadotrophin (HCG) and Anastrozole (both prohibited substances on the 2015 WADA Prohibited List) and, beginning in June 2014, he was prescribed

testosterone. The testosterone dosage was increased in December 2014. Respondent considered this testosterone to have improved his symptoms and to be essential to his well-being. He did not understand that this hormone replacement therapy would cause him to test positive, as he considered it was merely bringing his testosterone to "normal" levels, rather than giving him any sort of competitive advantage. He did not understand that the doping control was testing for exogenous testosterone, as opposed to the levels of testosterone in his system, which he did not consider to be outside the range of normal.

22. The Respondent was concerned about the positive doping test being a reflection on his character, which is extremely important to him. He testified that he had no intention of cheating or gaining an advantage over his competitors, but rather was just trying to feel better and follow the instructions of his doctor.
23. Upon signing up for their annual membership, the masters athletes, who in Respondent's age group are not computer conversant, receive their membership cards in the mail, along with merchandise coupons, but not information on anti-doping.
24. There are two different web sites used by masters USATF athletes, and one of them has no information at all about drug testing on its home page.
25. The witnesses testified that the process to sign up for the masters events does not heavily emphasize drug testing and the education that USADA has provided to the masters community is not registering in that community. Though masters events are open to athletes who are 30 years and older for track, the witnesses said that some older masters (50 years plus) are not aware of what is prohibited (some thought recreational drugs, such as marijuana or cocaine were the subject of the tests only) or the purpose of drug testing. They are aware that drug testing takes place because they are charged a fee at some events to pay for the drug testing.
26. USADA has an education program that includes masters-level athletes, and numerous resources are available to them. USADA conducts annual education sessions for masters-level athletes at the USATF annual meeting, which is not heavily attended by those athletes. And upon request, USADA will send education materials to USATF sanctioned events. In 2015, USADA sent education materials to the Masters 8km Championships, Masters 10km Championships, Masters Half Marathon Championships, Masters 1 mile Championships, Masters Marathon Championships and Masters 5km Championships. In addition, USADA's web site has a resources page through which athletes can find answers to almost all their anti-doping-related questions. However, there was testimony that USADA's education campaign, USATF webinars (in 2011), along with USADA making information available on the USATF masters web site have not raised awareness of what is prohibited and the purpose of the drug testing, or of the severe penalties for testing positive among the older masters community.
27. In the thirteen years he has been competing, Respondent has not prior to the date of this doping control been the subject of any drug testing. Respondent presented testimony that *National Masters News*, the print publication widely known in this community, has not been provided any anti-doping information to disseminate in

the publication. Respondent and his witnesses who are masters track athletes also testified that they were unaware of the details of the anti-doping rules. They were aware of other masters athletes having tested positive, but Respondent did not relate that to his taking prescribed supplements for hormone replacement.

28. Respondent presented testimony about what he considers the failure of the USATF rules to accommodate seniors such as himself and others who need hormone replacement therapy, are not professional or elite athletes, yet enjoy competition, but are subjected to the same regime of regulations as elite athletes.
29. USADA and Respondent presented conflicting testimony about the competitive results of Respondent after he started his hormone replacement therapy, but this testimony was inconclusive about whether this provided a true advantage or no advantage against his competitors.

IV. SUBMISSIONS OF THE PARTIES

A. Claimant

30. Testosterone is an Anabolic Androgenic Steroid listed as a Prohibited Substance in the class of Anabolic Agents on the WADA Prohibited List, adopted by the USADA Protocol. As a foundational principle, the WADA Code places responsibility for every substance that enters an athlete's body squarely upon the shoulders of the athlete. WADA Code 2.2.1. recognizes this duty of strict liability:
 - a. *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*
31. According to WADA Code 10.2.3, "the term 'intentional' is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk." Here, USADA contends that there is evidence that the Respondent knew or manifestly disregarded the risk that his use of testosterone would violate the rules.
32. Testosterone is a well-known steroid misused in sport for its muscle building and performance enhancing benefits. Information pertaining to illicit testosterone use to enhance performance is neither novel nor scarce. It is common knowledge, especially within the athletic community, that using testosterone is prohibited due to its performance enhancing effects.
33. In *Barnwell v. USADA* AAA No. 77 190 514 09 (2010), Barnwell was an experienced masters-level athlete, "who has competed nationally and internationally for many years. Because of that experience he knew or should have known that the WADA Code places responsibility for every substance that enters

an athlete's body squarely upon the shoulders of that athlete. The principle that an athlete is responsible for what enters his or her body is not a new principle; it was part of sport anti-doping rules long before adoption of the Code. Without adherence to this principle the anti-doping system is not fair and equitable for every athlete, including those that participate at the World Masters level." *Barnwell* ¶7.1. *Barnwell* had an adverse analytical finding indicating the use of a synthetic anabolic agent like testosterone. *Id.* ¶2.3(E). The Panel, applying the 2009 Code, imposed a two-year sanction, which if analyzed under the 2015 Code, would have likely resulted in a four-year sanction.

34. Similarly, the Respondent is a top competitive masters-level athlete who has been involved with the sport since 2002 and competes nationally and internationally. Given the Respondent's competitive level and lengthy involvement with the sport, USADA argues that it follows that he knew testosterone was a prohibited substance for athletes like himself to ingest. At a minimum the Respondent knew that there was a "significant risk that the conduct [i.e., ingesting testosterone and competing without a TUE] might constitute or result in an anti-doping rule violation and manifestly disregarded that risk." Consequently, in Claimant's view the appropriate period of ineligibility is four years.
35. The Respondent has the burden of establishing by a balance of probability that his use was not intentional. Claimant contends he failed in that burden.
36. If the Panel determines that Respondent has carried his burden in proving by a balance of probability that he did not ingest the testosterone intentionally, USADA maintains that a two-year period of ineligibility should be imposed. WADA Code 10.2.2.
37. The Respondent argues that he should receive "no sanction at all" because he did not receive anti-doping education. The only WADA Code provision that would allow for no period of ineligibility is Article 10.4. But Article 10.4 only applies "in exceptional circumstances, for example, where an athlete could prove that, despite all due care, he or she was sabotaged by a competitor." WADA Code 10.4 *Comment*. Exceptional circumstances cannot include the relatively common factor of not having received formal anti-doping education, especially given the accessibility of materials available to the Respondent for researching the propriety of beginning a testosterone replacement regimen while competing.
38. The Respondent bears the burden of establishing by a balance of probability that he had "No Significant Fault or Negligence" and is therefore entitled to a reduced sanction under Article 10.5. USADA submits that the most effective and consistent way to analyze cases under Article 10.5 is to apply the *Cilic* framework. *Cilic* is the seminal case on how and when a sanction should be reduced under Article 10.5. *Cilic and International Tennis Federation* CAS 2013/A/3327. This CAS award was designed to "set[] out principles which could guide a hearing panel's discretion to encourage consistency." *Cilic*, p. 14 "The decisive criterion based on which the period of ineligibility shall be determined within the applicable range of sanctions is fault." *Id.*

39. The Panel in *Cilic* recognized three degrees of fault under the 2009 WADA Code in a case where the sanction could be from a reprimand to a 24 month period of ineligibility: considerable, normal, and light. *Cilic*, p.15. For cases where considerable fault is found, the Panel suggested a sanction range of 16-24 months with the standard case of this type leading to a 20-month suspension. *Id.*
40. The *Cilic* Panel analyzed both the objective and subjective fault of the athlete but put an emphasis on the objective standard to determine in which category a case falls. The Panel stated that the objective standard should be used to move an athlete between the three categories, and the subjective element should be used to move an athlete up and down within the category. *Id.* at p. 15-16. Only under the most extenuating circumstances could subjective elements warrant movement between the categories. *Id.* at p. 16.
41. The objective standard looks at "what standard of care could have been expected from a reasonable person in the athlete's situation." *Id.* The *Cilic* Panel recognized that different situations call for different standards of care by an athlete. *Id.* Addressing substances banned at all times - like testosterone - the Panel opined that the highest standard of care would be expected "because these products are particularly likely to distort competition." *Id.* at 16. The Panel in *Cilic* described the full standard of care as including "(i) read[ing] the label of the product used (or otherwise ascertain[ing] the ingredients), (ii) cross-check[ing] all the ingredients on the label with the list of prohibited substances, (iii) mak[ing] an internet search of the product, (iv) ensur[ing] the product is reliably sourced and (v) consult[ing] appropriate experts in these matters."
42. The Respondent failed to undertake these steps or any other precautions before using testosterone. Because the Respondent failed to undertake any steps to determine whether the substance he was taking was prohibited, Claimant contends that the Respondent's degree of fault is significant and should not be reduced.
43. In *USADA v. Piasecki* AAA 30 190 00358 07 (2007), the athlete tested positive for a prohibited substance after failing to heed numerous warning signs or avail himself of readily available information that would have alerted him to the fact that a supplement he was using contained a prohibited substance. The Arbitrator found that although Piasecki seemed to have undertaken good faith efforts to avoid committing an anti-doping violation by consulting with a trusted salesperson, checking the supplement ingredients against the prohibited list and briefly browsing the supplement manufacturer's website, the athlete was still significantly at fault for his doping violation because he "could have prevented the Positive Test by taking [other] minimal steps available to him without any difficulty." *Piasecki*, ¶31. Accordingly, there was no basis to reduce the two-year period of ineligibility. *Id.* ¶32.
44. The subjective standard looks at what is expected of this particular athlete, given the athlete's personal characteristics. The factors include the athlete's age and experience; language or environmental problems; extent of anti-doping education received or accessible; and other personal impairments. On balance, and as explained more fully below, Respondent's personal characteristics require that he

exercise the utmost diligence before ingesting substances, especially an anabolic steroid well known for its performance enhancing benefits. Because he did not undertake any of the actions that were expected of him as an experienced athlete, USADA argues that the Respondent's level of fault under *Cilic* is significant and on the upper end within the highest range, i.e., two years.

45. The Respondent acknowledges that he has been competing in masters events for almost fifteen years. Over the last three years he has been competing while ingesting hormones, including supplemental testosterone since 2014, in violation of the WADA Code. The Respondent is a professional realtor with no barriers preventing him from understanding his obligations under the Code.
46. Regarding education, the Panel in *Cilic* recognized that simply not having received formal anti-doping education may not be sufficient reason alone to reduce a period of ineligibility. Accordingly, the *Cilic* panel makes clear that the subjective factor to consider is "[t]he extent of anti-doping education received by the athlete (or the extent of anti-doping education which was reasonably accessible by the athlete)." *Id.* at p.18. Although the Respondent may not have received formal anti-doping education, he had a panoply of resources available to him, and the decision not to pursue these tools was wilfully made. This is corroborated by the fact that the Respondent did not list testosterone on his Doping Control Record.
47. The Code provides in relevant part that "[e]xcept as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility." WADA Code 10.11. The Respondent requests that the Panel start his sanction on July 25, 2015, the date of sample collection, effectively giving him credit for "timely admission" under WADA Code 10.11.2.
48. WADA Code 10.11.2 requires that where this Article is applied "the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete ... accepted the imposition of the sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed."
49. Accordingly, even if the Panel accepted the Respondent's request for a six-month sanction or imposed a twelve-month sanction, such a sanction could not begin on July 25, 2015, because half the sanction would not be served after the date the Panel imposes the sanction, thereby directly contravening WADA Code 10.11.2. Therefore, if the Respondent wishes to invoke WADA Code 10.11.2, then the Respondent's minimum sanction would be double the time period from July 25, 2015 to the date of the Panel's decision. For example, if the Panel provides its decision in this matter on July 25, 2016, then the minimum sanction available to the Respondent under WADA Code 10.11.2 would be two years.

B. Respondent

50. Mr. Pizza asks that he be found not at fault or at no significant fault, as he was not provided any information or education about drug testing, banned substances, TUEs, or relevant policies or rules by USATF, the USOC, or USADA upon entering the sport or entering any competitions as required in the USOC Policies.

He contends that USADA and USATF have made no effort whatsoever to specifically warn masters athletes like Respondent about prohibited substances, despite the fact that those entities know or should know that these masters athletes are most likely to need and be prescribed these therapies by their doctors. If USADA and USATF wish to apply strict anti-doping rules to masters athletes, then they owe some duty of education to these athletes as stated in the USOC Policies. Having completely failed to do so, they cannot even argue that Respondent is at fault because he should have known that his doctor prescribed testosterone replacement therapy (TRT) was banned. Under these circumstances, and considering all of the facts, it is submitted that Respondent is not at fault in using TRT and should therefore receive no sanction at all.

51. If the Panel believes that Respondent was at fault or negligent in his use of TRT despite the fact that he received no anti-doping education, then the Panel must still consider the "no significant fault or negligence rule".
52. Respondent submits that cases have been treated differently in the history of the WADA Code, specifically because it is accepted that elite athletes have received express warnings from their federations and from anti-doping organizations.
53. Masters athletes are more likely than younger and elite athletes to require supplements as they age, yet they are not the beneficiaries of any warnings or significant education from anti-doping organizations or their national governing bodies. There is no mention of education about banned substances, drug testing, USADA codes, or even the USADA website anywhere on the USATF masters page that Respondent typically uses. USADA's evidence on anti-doping efforts for education did not relate to providing masters athletes with specific materials. The masters athletes are not among the groups which are required to receive anti-doping materials and acknowledge their receipt prior to competing.
54. The materials were available on web sites, but masters athletes are not necessarily computer conversant, and they would not seek out this material based on their understanding that masters meets are recreational and not elite events. Masters athletes, some experiencing their first participation ever in sports outside of school activities, have no idea that some of the substances they normally take for their good health, even those prescribed by their doctors, can earn them a ban from the sport.
55. Section 13.4 of the USOC Policies states: "An athlete who is a credentialed member of the Olympic, Paralympic, Pan American, ParaPan American or Youth Olympic Games is required to complete, prior to participation in those Games, a USADA online education program specifically designed for athletes (USADA Athlete Education Module)." Notably missing from this list is masters participants.
56. The first occasion on which many masters athletes might hear of drug testing is from chance conversations with other athletes at a competition. Respondent had a lack of knowledge resulting in his failure to apply for a TUE prior to competing. .
57. Respondent argues that it would be a travesty to penalize him for failing to heed warnings about TRT that he never received, because those warnings were never

directed to him. He took his doctor's advice, just like many of the age 50 and over masters athletes that he races against, none of whom have been advised by USADA or USATF about anti-doping rules. If Respondent was negligent at all, he contends that his level of negligence was minimal, and under the circumstances he should be entitled to the maximum reduction of sanction possible under WADA Code 10.5.2, which is one-half of the period of ineligibility otherwise applicable.

58. Like many aging men, 62-year-old Mr. Pizza found himself in 2013 dealing with unexplained symptoms: fatigue, lowered libido and erectile dysfunction. His doctor's examination confirmed the existence of historical and current data supporting the diagnosis of testicular hypofunction metabolic syndrome and prescribed supplements including testosterone. Respondent understood that the therapeutic use of testosterone would produce no additional enhancement of performance other than that which might be anticipated by a return to a state of normal health following the treatment of a legitimate medical condition and that there is no reasonable therapeutic alternative to the use of testosterone.
59. Respondent has been completely open and transparent about his situation with USADA from the day that he was notified of his positive test to the present.
60. When comparing Respondent's performances throughout the years with those of his competitors, he claims he gained no advantage due to his TRT. USADA claims that the TRT gives him a competitive advantage, yet the gap between Respondent and runners who historically are both faster and slower than he is arguably remained nearly the same before and after his therapy began.
61. Unlike elite and youth competitions, there is no consistency to the competitive level from one masters competition to another. There is a significant difference year to year at many masters national competitions. The difference in competitive level is often due to the wide variance of the abilities of a very few competitors on a day of competition. Adult schedules, priorities, and ability to travel are not the same as youth and open/elite competitors. Health and ability to effectively train vary more than with youth and open/elite athletes too. These and other factors make a significant difference in competitive levels of major masters competitions.
62. WADA Code 10.11.2 provides that where the athlete promptly admits the anti-doping rule violation after being confronted with it, the start date of the sanction can be as early as the date of sample collection. As discussed above, Respondent was first notified that his "A" sample had tested positive for testosterone on September 11, 2015. Therefore, because Respondent timely admitted the anti-doping rule violation, the start date of any sanction should be the date of the test.

V. MERITS

A. Maximum Sanction

63. Since Respondent has admitted the anti-doping rule violation, the only determination for this Panel is the applicable period of ineligibility. USADA argues that Respondent must carry the burden of proving by a balance of probability that

“he did not ingest the testosterone intentionally” in order for WADA Code 10.2.2 to apply and the base period of ineligibility to be two years. WADA Code 10.2.3 provides however that the term “intentional is meant to identify those athletes who cheat.” Specifically required is that Respondent knew his conduct constituted an anti-doping rule violation or knew there was a significant risk that the conduct might result in an anti-doping rule violation and manifestly disregarded that risk. The Panel finds that Respondent has met his burden under WADA Code 10.2.2 and proved that the violation was not intentional as defined in WADA Code 10.2.3. Respondent did not know taking his TRT was an anti-doping rule violation nor did he perceive any risk at all. The Panel accepts his explanation that he was under the impression that bringing his testosterone level into the “normal” range would not be an anti-doping rule violation.

64. The maximum period of ineligibility therefore is two years. The determination then is the degree of fault under the definitions. Respondent does not meet the requirements under the definition of No Fault or Negligence to have the period of ineligibility eliminated, i.e. had Respondent exercised utmost caution, he would have realized that testosterone had been a problem for other elite athletes and that perhaps he ought to do some research upon being prescribed testosterone. He did none of the research appropriate and thus did not exercise utmost caution as required to eliminate the period of ineligibility under WADA Code 10.4.

B. Reduction of Period of Ineligibility

65. In order to reduce the period of ineligibility, Respondent needs to establish No Significant Fault or Negligence, and then the Panel needs to determine the category of fault into which Respondent’s fault falls, according to the *Cilic* framework.
66. Fault is defined in the WADA Code as “any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete’s ... degree of Fault include, for example, the Athlete’s ... experience, ... special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete’s ... degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete’s ... departure from the expected standard of behavior.”
67. For Respondent to establish No Significant Fault or Negligence as defined in the WADA Code, he needs to prove that his fault, “when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation.” The criteria for No Fault or Negligence, as referenced above, require the exercise of utmost caution, but various factors in the totality of Respondent’s circumstances, as described below, do lead to the Panel’s conclusion that Respondent meets the criteria of No Significant Fault or Negligence.

C. Degree of Fault

68. As set forth in *Cilic*, in order to determine Respondent's fault, the Panel first looks to the "category of fault", and considers both the objective and the subjective level of fault. "The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities." *Cilic*, p. 16 ¶71.
69. The objective situation here is that a typical masters athlete when competing in the culture of fun, recreational events such as the USATF masters competitions might not perceive that he needs to undertake an education in the anti-doping rules and thereby learn he needs to apply for a TUE to take the TRT prescribed by his doctor. The education was available from USADA through USATF, but the masters community is not aware of the anti-doping program in the same manner as the elite athletes are. Respondent's argument that he was not provided any information or education on drug testing is not controlling, though it is a sympathetic argument. USADA made the information available, and it does not owe a "duty" of education beyond that obligation. Neither USADA nor USATF required anti-doping education as is done with the elites. However, there is a reference to the anti-doping rules in the registration forms for masters events. There was awareness in that community that masters athlete Mr. Barnwell had received a sanction. A masters athlete could have perceived the risk, but heightened diligence is definitely not part of the culture. The full standard of care described in *Cilic* regarding reading the label, cross-checking ingredients against the prohibited list, making an internet search, etc. is a standard applicable to a reasonable person in an elite athlete's situation. This is not the standard in the community of masters athletes. If that is the standard expected of these athletes, there was no general awareness of it. Other athletes who have previously been denied any sanction relief as referenced by USADA were sanctioned under the previous WADA Code.
70. Respondent's category of fault using the objective standard of care that someone in this athlete's situation could have been expected to meet is to be determined taking into consideration the standard prevailing in the culture of the masters events in his age group, in which there is a lower level of awareness of the applicability of the doping rules to his competitions. This allows for a reduction in the sanction, but brings him into the highest category of fault, i.e. considerable fault as defined in *Cilic*. Objectively, any reasonable person, including a masters athlete, should have known that use of testosterone raises anti-doping issues, which USATF seeks to address through exemptions if appropriate.
71. The degree of fault is influenced by the subjective elements specifically referenced in the WADA Code definition of fault, i.e. Respondent's experience and the degree of risk he perceived in light of his personal capacities. In addition, as referenced in the definition of Fault, the "circumstances considered must be specific and relevant to explain the athlete's departure from the expected standard of behaviour". Respondent had never been drug tested in his thirteen years of masters competition, and he certainly should have perceived a risk in taking the TRT, but the Panel accepts his explanation that he understood the TRT to be irrelevant as a prohibited

substance since he was still within the normal range of testosterone. He did not perceive that exogenous testosterone was what was tested and prohibited. In that situation, he did not perceive any risk, even had he considered that he was subject to doping control. He was taking the TRT to enhance his well-being and general health, not to gain an advantage over his competitors. The fact that he did not disclose the testosterone on his Doping Control Record is troubling to the Panel, but he was under stress in the doping control station and after his race, and the Panel accepts this omission was based on confusion. He should have understood the applicable rules, but he perceived them to be applicable to the elite athletes or even younger masters athletes, not to a senior athlete who was in his mind simply taking care of his health. The elite athletes are required to know about the Prohibited Substances list and to do their research. The culture of those athletes is completely different. They are regularly made aware of the risks. The Panel finds it is relevant that the masters track and field athletes in the 60+ age group believe that these anti-doping rules do not apply to their doctor prescribed treatments. This is simply not something these athletes are paying any attention to.

72. USADA's argument that ignorance is not a defense is of course accurate. Respondent is definitely at fault for his ignorance or inattention. Under these specific and relevant circumstances, considering both the objective and subjective levels of fault, the degree of fault meets the requirements of reduction for No Significant Fault or Negligence but still in the category of considerable fault.
73. Consistent with the above, the Panel finds there was no intent for Respondent to enhance performance by taking the Prohibited Substance.
74. Under *Cilic*, the subjective factors, like the objective factors, are to be evaluated in the context of the case to ascertain whether the subjective factors actually contributed to the athlete's rule violation in the particular case. In these specific circumstances, the subjective factors clearly contributed to Respondent's rule violation, and since they show little care they do not move Respondent up or down in the considerable category of negligence. Rather, he falls squarely in the middle, and the Panel imposes a period of ineligibility of twenty months on Respondent.

D. Disqualification of Results

75. Respondent's competitive results from the date of his positive test, June 25, 2015 through the date of his provisional suspension are to be disqualified.

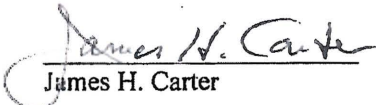
E. Start Date

76. Under WADA Code 10.11.2, Respondent did promptly admit his anti-doping rule violation and as such is potentially entitled to an early start date for his sanction. However, the further requirement of WADA Code 10.11.2 is that he must serve at least one-half of the period of ineligibility going forward from the date he accepted the imposition of a sanction (which he has not done), or the date of a hearing decision. Since Respondent has already been provisionally suspended for ten months, he needs to serve a further ten months from the date of this decision. Thus, there is no potential to start the period of ineligibility any earlier.


Findings and Decision

The Panel therefore rules as follows:

- A. Respondent has committed an anti-doping rule violation under Article 2.2 of the WADA Code, for Use of a Prohibited Substance;
- B. Respondent has sustained his burden of proof under Article 10.2.1 of the WADA Code that his anti-doping rule violation was not intentional;
- C. Respondent has sustained his burden of proof under Article 10.5.2 of the WADA Code that he bears No Significant Fault or Negligence for the anti-doping rule violation, and the period of Ineligibility is reduced from two years to twenty months;
- D. The start date of Respondent's period of Ineligibility is the date of the imposition of a provisional suspension, i.e. September 11, 2015 and the period of Ineligibility expires May 10, 2017;
- E. Respondent's competitive results from the date of his positive test, June 25, 2015 through the date of his provisional suspension are to be disqualified, as well as forfeiture of any medals, points and prizes earned during that period.
- F. The parties shall bear their own attorneys' fees and costs associated with this arbitration;
- G. The administrative fees and expenses of the American Arbitration Association, and the compensation and expenses of the Panel, shall be borne by USADA and the United States Olympic Committee;
- H. This Award shall be in full and final resolution of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.


James H. Carter


Alan Rothenberg


Maidie Oliveau
Chair

Dated: July 18, 2016