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FINA Doping Panel 07/18

comprised of

Robert Fox (SUI) Chairman
Faride Ben Belkacem (ALG) Member
David Lech (CAN) Member

In the proceedings against

The swimmer Madisyn Cox (USA)

Affiliated to USA Swimming Inc.

Represented by Mr. Paul J. Greene, attorney, Global Sports Advocates, LLC
One Monument Way, Suite 426 Portland, Maine USA 04101,

1. THE PARTIES

- 1.1 The FEDERATION INTERNATIONALE de NATATION (FINA) is the International Federation governing the sport of Aquatics. FINA has established and is carrying out, *inter alia*, a doping control program, both for in-competition as well as out-of-competition testing.
- 1.2 USA Swimming is a member of FINA. USA Swimming is required to recognize and comply with FINA's anti-doping rules which are set out in the FINA Doping Control Rules ("FINA DC"). The FINA DC is directly applicable and must be followed by Athletes, Athlete Support Personnel, coaches, physicians, team leaders, and club representatives under the jurisdiction of the TSA.
- 1.3 The Athlete is a member of USA Swimming and thus is subject to the jurisdiction of the FINA DC.

2. NATURE OF THE CASE

- 2.1 On 5th February 2018, the Athlete provided an out-of-competition urine sample in Austin USA.
- 2.2 The athlete's sample returned an adverse analytical finding ("AAF") for the presence of Trimetazidine, a non-specified substance listed under Class 4.5.4 (Hormones and Metabolites) of the WADA Prohibited List, 2018.

A. SUMMARY OF LEGAL DISCUSSION AND SANCTION

1. Ms. Cox is an honest, very hardworking and highly credible athlete who is not a 'cheat'. She is, unfortunately, caught in a dilemma. The Panel believes her testimony and that of her mother. The case Ms. Cox presented was highly credible. Due to the credible nature of her testimony, her moral character, the very low level of the drug detected, plus the evidence received from other witnesses, the Panel is prepared to take the highly unusual step of accepting that Ms. Cox did not act with intention in the absence of proof regarding the source of the Trimetazidine that came into her body. However the Trimetazidine did enter her body (which is admitted), it was unintentional. In other words, Ms. Cox did not intend to dope and the adverse analytical finding (AAF) that has been admitted was unintentional. This conclusion reduces the presumptive sanction from 4 years to 2.
2. The Panel was invited to conclude that water contamination caused the AAF. If a trace amount of Trimetazidine was ingested 12 hours before the sample was collected, it was pharmacologically possible that water contamination was the cause of the AAF. However, on the totality of the evidence tendered at the hearing (in the notable absence of any evidence tendered by FINA to rebut the athlete's contentions) the Panel cannot conclude that it is more likely than not that water contamination caused the AAF.
3. The Panel cannot conclude that Ms. Cox marshalled the evidence required to prove on a balance of probability that tap water she consumed in Austin, Texas caused the AAF. It remains unclear if tap water caused the AAF or if the AAF was caused by some other incidental and inadvertent contact with Trimetazidine such as food she consumed, her supplements, contact with food handlers or social contact with friends or strangers. All of this is speculative and remains unknown.
4. It also remains unknown what concentration or amount of Trimetazidine was ingested or how long prior to the sample collection it entered Ms. Cox's body. Multiple scenarios exist that can explain the reported 0.1 ng/ml detected in the urine sample. One such scenario is water that was contaminated with Trimetazidine was consumed 12 hours previously.
5. However, the Panel is not convinced that it is more likely than not that water contamination caused the AAF. While the tap water in Ms. Cox's apartment was tested and was reported negative for Trimetazidine many weeks later, this is not determinative of the issue. The Panel notes three primary concerns (i) Trimetazidine is not FDA approved in the United States so is not prescribed and may not be as widely used (compared to other common drugs like HCTZ); (ii) no water test data is available for the greater Austin area's water supply; (iii) the Panel heard no "local conditions" evidence such as contamination risk in the water sources for Austin's water supply, geology conditions; hydrology explanations, Austin's filtration systems, chemicals used or filtering procedures, etc.; the suggestions by the athlete regarding how the Trimetazidine might have come into Austin's tap water were all speculative and included: proximity to Mexico (where the drug is approved), that it is a sanctuary city, locals can obtain Trimetazidine over the internet

and travelers from nations where the drug is approved can and do come often to Austin to visit. The Panel was left, in essence, with an extrapolation from the general proposition that various pharmaceuticals can and do get into tap water. The Panel was thus invited to conclude that this is the most likely explanation for the AAF for Trimetazidine in Austin, Texas as well.

6. The Panel is not satisfied that Ms. Cox can discharge her onus in DC 10.4 regarding the how the substance entered her system (to establish 'No Fault or Negligence') by demonstrating by means of deduction that since various scenarios did not cause her AAF that the remaining option proposed by Ms. Cox (water contamination) must therefore be "more likely than not" the cause. The Panel does not accept that form of reasoning based on the evidence it heard.
7. The Panel cannot perform an evaluation of fault or negligence given the outstanding uncertainty regarding how the Trimetazidine entered Ms. Cox's system. Unfortunately, for this reason the sanction must remain at 2 years.

3. CONCLUSION

- 3.1 Ms. Madisyn Cox is found to have committed an anti-doping rule violation under FINA DC 2.1, presence of a prohibited substance Trimetazidine in an athlete's sample (Class S4.5.4 of the WADA Prohibited List, 2018 – Hormones and Metabolites
- 3.2. Ms. Madisyn Cox is sanctioned with a two (2) year ineligibility period in accordance with FINA DC 10.2.2. The sanction starts on 3 March 2018, the day she last competed and ends on 2 March 2020.
- 3.3 All results obtained by Ms. Madisyn Cox from 5 February 2018, shall be annulled together with the consequences thereof which shall include the forfeiture of any medals, points, prizes or the reimbursement of prize-money.
- 3.4 All costs of this case shall be borne by USA Swimming association in accordance with FINA DC 12.3.
- 3.5 Any appeal against this decision may be referred to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland not later than twenty one (21) days after receipt of the complete and reasoned judgement (FINA Rule C 12.11.4 and DC 13).

FINA Doping Panel Chairman



Robert Fox