

CAS 2002/A/389 Walter Mayer v/IOC
CAS 2002/A/390 Marc Mayer v/IOC
CAS 2002/A/391 Achim Walcher v/IOC
CAS 2002/A/392 Peter Baumgartl v/IOC
CAS 2002/A/393 Volker Müller v/IOC

ARBITRAL AWARD

rendered by

THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Dr. Stephan **Netzle**, Attorney-at-Law, Zurich, Switzerland

Arbitrators: Dr. Dirk-Reiner **Martens**, Attorney-at-Law, Munich, Germany
Mr. Richard **Young**, Attorney-at-Law, Colorado Springs, USA

(hereinafter "the Panel")

Ad hoc Clerk: Mr. Laurent **Isenegger**, Attorney-at-Law, Geneva, Switzerland

in the arbitration proceeding between

MR. WALTER MAYER

MR. MARC MAYER

MR. ACHIM WALCHER

DR. PETER BAUMGARTL

MR. VOLKER MÜLLER

(hereinafter collectively referred to as "the Appellants")

Represented by Dr. Karl Heinz Klee and Dr. Günther Riess of the law firm Klee, Fuith & Riess, 38,
Maria-Theresien-Strasse, A-6020 Innsbruck, Austria,

- and -

INTERNATIONAL OLYMPIC COMMITTEE

(hereinafter referred to as "IOC")

Represented by Mr. Jan Paulsson and Mr. Zachary Douglas of the law firm Freshfields Bruckhaus
Deringer, Boulevard Hausmann, F-75008 Paris, France.

I. FACTS

A The Parties

1. The Appellants are respectively Mr. Walter Mayer, Mr. Marc Mayer, Mr. Achim Walcher, Mr. Volker Müller and Dr. Peter Baumgartl.
2. Mr. Walter Mayer used to be a successful cross-country skier. He has been the Austrian cross-country ski team head coach for a number of years. At the XIX Olympic Winter Games, Salt Lake City 2002 (hereunder the “2002 Winter Games”), he was also the team manager of the Austrian cross-country ski team and was accredited as such with the Austrian Olympic Team.
3. Mr. Marc Mayer is a cross-country athlete, a member of the Austrian cross-country national team, and he was accredited as such with the Austrian Olympic Team at the 2002 Winter Games. M. Marc Mayer is Mr. Walter Mayer’s son. In Salt Lake, he started in the following cross-country competitions: Men's sprint and Men's 50 km classical.
4. Mr. Achim Walcher is a cross-country athlete, a member of the Austrian cross-country national team, and he was accredited as such with the Austrian Olympic Team at the 2002 Winter Games. In Salt Lake, he started in the following cross-country competitions: Men's 30 km free mass start, Men's 10 km free pursuit.
5. Mr. Volker Müller is a non-medical practitioner (“Heilpraktiker”) in Bayrischzell, Germany. Mr. Müller is not a certified physician in any country but he is authorized to perform injections in Germany. Mr. Volker Müller was accredited as a chiropractor with the Austrian Olympic Team at the 2002 Winter Games.
6. Dr. Peter Baumgartl is an internal medicine physician. Until 1 April 2002, he held the position of the medical director of the Innsbruck hospital. Since many years, he has been a member of the medical staff of the Austrian ski team. At the 2002 Winter Games, he was accredited as the Chief Medical Officer of the Austrian Nordic ski delegation.

7. The Respondent is the International Olympic Committee ("IOC"), or, more particularly, it is the Executive Board of the IOC which, for the reasons set out below, pronounced the respective sanctions which are now being challenged before CAS by the Appellants.

B Events Giving Rise to the Arbitration

8. On 26 February 2002, shortly after the closing ceremony of the 2002 Winter Games, workers cleaning a home in Midway, Utah, near Soldier Hollow, discovered several bags containing blood transfusion equipment.
9. According to the "Inventory of Materials Found at the Austrian House" (Exhibit 13 to IOC's Response, annotated by Don H. Catlin), the following items were found (the "Items"):

"A royal blue soft-sided sports bag measuring approximately 18"x12"x8". There was a black carrying strap, zipper on the sides and top, and a small pocket on each side with black web straps.

VIALS AND AMPOULES *The four products listed immediately below contain substances that are used in conventional medicine to treat anemic patients. Anemia results from a deficiency of iron, folic acid and other materials.*

Ferlixit, Orale-endovena, 5ml, clear glass ampules

[iron, usually given parenterally, an oral formulation exists]

*2 Prefolic 15mg IV/IM Titolare A.K, brown vial, red cap, rubber stopper **[this is likely to be folic acid]***

*1 Prefolic, 3 ml clear glass vial **[this is also likely to be folic acid]***

*Mel H Ampullen IV clear glass vial **[A similar product contains thiaminhydrochlorid, ascorbic acid, riboflavin, pyridoxinhydrochlorid, nicotine amide, sodium D pantothenat, meso inosit, methionin, glycine, mono natriumglutamat, and sodium chloride]***

VARIOUS PHOSPHATE AND SODIUM SALTS

1 empty box Esafasfina 5g, 1 flacone 5 g, D-fructoso-1,6-Difosfate, Biomedical Foscoma, A008783110

Esafosfina, 5g, 100ml glass vial, red, gray rubber stopper

Esafosfina Fleboclisi, 5g, 100 clear glass, blue gray rubber stopper

1 glass rubber stoppered vial, 500ml, Natriumchlorid 0.9%, surgical tape attached to vial and wrapping IV unit or infusion set

VITAMINS AND AMINO ACIDS

*2 Cevitol 1000mg, 5ml clear glass vial: **[Injectable vitamin C]***

2 Rocmaline-Ampullen, 10ml, Ch.B 103284: [arginine (0.413g) and malic acid (1.5g), used for 'functional disorders of hepatic origin']

1 Mel-H Ampullen B068017, white/blue label: [injectable multi vitamins]

Magnerot, IV injectable, 10ml clear glass vial [injectable magnesium and orotic acid]

1 Hepa-Merz, 10ml unopened, 500mg, ParkMed, Filmtabletten Pfizer [L-ornithine and L-asparatate, usually given for hepatic failure]

MISCELLANEOUS

1 unlabeled rubber stoppered vial, 100ml

8 open ampules Mediviton 1ml brown glass

1 Mediviton 4ml brown glass

MATERIALS THAT HAVE NOT BEEN CHARACTERIZED

*10 Matricell Königinnen-Trank 7.5ml clear glass with yellow screw-cap top. **[queen bee drink, also may be called Gelee Royale, claimed to improve performance]***

*1 Pereoton International PEPH energy release formula, 74g, label: Radstadt 460.00 **[Similar to Royal Bee Jelly]***

*1 Peeroton International energizer, Product code 25350, 120g, black/yellow plastic vial **[mineral energy drink, see www.peeroton.com]***

1 Terra Syn Med Immune Energy, White/green Inhalt 201g Madaus

*1 Entspannungs-Duft, 10ml brown vial with white cap **[relaxation scent]***

TRANSFUSION EQUIPMENT

3 blood bags ABO Rh M 2207 500ml BLUTBEUTEL EB LL 500ml, another labeled: M 2005.

The bags were empty, but contained significant blood residual

2 Bluttransfusionsgeräte Red/white paper bags [Blood transfusion device] MPO Medizin Produkt, Potzer Seidel GmbH, 9020 Klagenfurt

1 clear plastic bag, 4"x8", Einfachbeutel LL, Lot #1083642 [one way bag]

Multiple infusion sets (4-5) with needles attached. Some contained butterfly needles. Blood in most of the IV lines

2-3, 10ml syringes

Infusion set, 1 liter plastic bottle, Glucose "Braun" 5%

2-500 glass bottles, Glucose 10%, (taped for hanging)

1 white paper sanitary napkin bag containing 6-8 used needles

10-15 used needles and wrappers

10. Following their discovery, the Items were handed to Utah police forces and further to the Salt Lake Organizing Committee for the Games ("SLOC"), which in turn transferred the Items to the Utah Health Department and informed the IOC accordingly.
11. The chalet in Midway where the Items were found had been rented out to the Austrian team for their cross-country skiing athletes and accompanying staff from 30 January 2002 until 25 February 2002. It was later established that during that period of time, Austrian athletes kept going back and forth between the chalet in Midway and the premises occupied by the Austrian Team at Homestead.
12. The IOC informed the Austrian Olympic Committee and requested an explanation which was received on 13 March 2002. An Inquiry Commission ("IC") was appointed by the IOC President to investigate the case and to report its findings to the IOC Executive Board ("IOC EB"). The purpose of the inquiry was to determine whether a violation of the Olympic Movement Anti-Doping Code ("OMAC") had been committed in this instance.

13. Following a hearing held in Lausanne on 16 March 2002 which was attended by Messrs. Walter Mayer, Marc Mayer and other members of the Austrian Team, the IC was able to establish that Mr. Walter Mayer had performed so-called UV Blood Transfusions on his son Marc Mayer on up to four occasions after arriving in Utah to prepare for competition, and that he had performed one UV Blood Transfusion on Mr. Achim Walcher immediately after the latter's arrival in Utah on 2 or 3 February 2002 (for a description of UV Blood Transfusion, see paragraph 45 ff. below). The reason put forward by Mr. Walter Mayer to justify the use of this blood therapy was that such treatment was the only one available which was able to relieve his son Marc Mayer of the suffering caused by his neurodermatitis. Following this hearing on 16 March 2002, the IC also felt the need to further investigate the behaviour of Dr. Baumgartl and Mr. Müller.

14. Based on these facts, the IC came to the following conclusions:

“We suggest to the IOC Executive Board:

To open a disciplinary procedure and to take sanctions against Walter Mayer, Marc Mayer and Achim Walcher;

(...)

3. To open inquiry procedures against Volker Müller, Dr. Peter Baumgartl and the Austrian NOC.”

(Report of the IC dated 27 March 2002)

15. On 2 April 2002, the IOC President requested the IC to carry out a further investigation regarding Mr. Volker Müller, Dr. Baumgartl and the Austrian NOC. On 19 April and 2 May 2002, the IC heard Mr. Müller, Dr. Baumgartl and the General Secretary of the Austrian NOC over the phone.

16. On 14 May 2002, the IC rendered a complementary report, which reached the following conclusions:

“We suggest to the IOC Executive Board:

To open a disciplinary procedure and consider taking measures and/or sanction against Volker Müller;

2. *To open a disciplinary procedure and consider taking a light sanction against Dr. Peter Baumgartl;*

(...).”

(Complementary Report of the IC dated 14 May 2002)

17. During its session held in Kuala Lumpur on 26 May 2002, the IOC EB offered the Appellants the opportunity to defend their cases. The Appellants did not appear personally before the IOC EB but were represented by their counsel Dr. Klee. The IOC EB rendered a decision in each of the Appellants’ cases. Such decisions have been summarized as follows:

Mr. Walter Mayer:

“(...) The issue is whether the procedure carried out by Mr. Walter Mayer and used on the athletes Mr. Marc Mayer and Mr. Achim Walcher, which falls under the definition of blood doping (...) and constitutes a prohibited method (...), was used for therapeutic purposes exclusively. This was not proved to be the case. It should also be noted that the procedure carried out on the athletes had not been brought to the attention of the IOC Medical Commission.

The IOC Executive Board considers that Mr. Walter Mayer has committed a doping offence (...).

Considering the above, (...) the Executive Board of the International Olympic Committee decides:

To declare Mr. Walter Mayer ineligible to participate in all Olympic Games up to and including the Olympic Games held in 2010.”

Mr. Marc Mayer:

“(...) The issue is whether the procedure carried out by Mr. Walter Mayer and used on the athlete Mr. Marc Mayer, which falls under the definition of blood doping (...) and constitutes a Prohibited Method (...), was used for therapeutic purposes exclusively. This was not proved to be the case. It should also be noted that the procedure carried out on the athlete had not been brought to the attention of the IOC Medical Commission.

The IOC Executive Board considers that Mr. Walter Mayer, the recipient of the Prohibited Method, has committed a doping offence (...).

Considering the above, (...) the Executive Board of the International Olympic Committee decides:

The athlete Mr. Marc Mayer (Austrian), cross-country skiing team, is disqualified from the events in which he competed at the XIX Olympic Winter Games, Salt Lake City 2002; and

The International Ski Federation is hereby requested to modify the results of the above-mentioned events and to consider whether it should take any further action within its own competence.”

Mr. Achim Walcher:

“(…) The issue is whether the procedure carried out by Mr. Walter Mayer and used on the athlete Mr. Achim Walcher, which falls under the definition of blood doping (...) and constitutes a Prohibited Method (...), was used for therapeutic purposes exclusively. This was not proved to be the case. It should also be noted that the procedure carried out on the athlete had not been brought to the attention of the IOC Medical Commission.

The IOC Executive Board considers that Mr. Achim Walcher, the recipient of the Prohibited Method, has committed a doping offence (...).

Considering the above, (...) the Executive Board of the International Olympic Committee decides:

1. The athlete Mr. Achim Walcher (Austrian), cross-country skiing team, is disqualified from the events in which he competed at the XIX Olympic Winter Games, Salt Lake City 2002; and

2. The International Ski Federation is hereby requested to modify the results of the above-mentioned events and to consider whether it should take any further action within its own competence.”

Mr. Volker Müller

“(…) According to statements made by Mr. Volker Müller (...), he uses in his normal practice two different methods implying the taking and re-injecting of own blood after treatment. He admitted that he had, on several occasions, treated several athletes by these methods, including members of the Austrian Cross-Country Ski Team. However, he was not sure whether he had carried out this procedure in Salt Lake City but he did not exclude having done so. In any event, he would have been prepared to use this treatment if he had felt it appropriate.(…) The IOC Executive Board concludes that Mr. Volker Müller is therefore using and advocating methods which are prohibited by the Olympic Movement Anti-Doping Code (...).

Considering the above, (...) the Executive Board of the International Olympic Committee decides:

To declare Mr. Volker Müller ineligible to participate in all Olympic Games up to and including the Olympic Games held in 2010.”

Dr. Peter Baumgartl:

“(...) The Executive Board concluded that the procedure carried out by Mr. Walter Mayer and used on the athletes Mr. Marc Mayer and Mr. Achim Walcher upon the occasion of the XIX Olympic Winter Games, Salt Lake City 2002, falls under the definition of blood doping (...) and constitutes a Prohibited Method (...).

The IOC Executive Board considers that Dr. Peter Baumgartl, as Head Doctor of the Austrian Olympic Team should have exercised greater supervision and control over the activities of the Austrian medical team and the athletes and coaches and, in particular, Mr. Volker Müller and Dr. Peter Baumgartl, upon the XIX Olympic Winter Games, Salt Lake City 2002.

The IOC Executive Board concludes that, through Dr. Peter Baumgartl’s lack of supervision and control, he has facilitated doping offences to have happened and Dr. Peter Baumgartl has therefore violated Paragraph 3 of Article 1 of the Olympic Movement Anti-Doping Code (...).

Considering the above, (...) the Executive Board of the International Olympic Committee decides:

To issue a strong warning to Dr. Peter Baumgartl.”

18. On 12 June 2002, each of the five Appellants filed an individual Statement of Appeal with CAS, together with 1 exhibit, against the aforementioned respective decisions of the IOC EB dated 26 May 2002.

C Constitution of the Arbitral Panel and Arbitration Proceedings

(i) Written Proceedings

19. In their Statements of Appeal, the Appellants appointed Dr. Dirk-Reiner Martens as arbitrator. By letter to CAS dated 24 June 2002, the IOC designated Mr. Richard Young as arbitrator.

On the same day, each of the five Appellants filed an Appeal Brief with CAS, together with 14 exhibits, including the Expert Report of Dr. Frick.

20. By letter dated 5 July 2002, CAS informed the parties that Dr. Stephan Netzle would be the President of the Panel in these appeal proceedings, his co-arbitrators being Dr. Martens and Mr. Young.

21. On 30 July 2002, the CAS Secretary General informed the parties that the hearing in the present case would be held in Lausanne on 17 and 18 September 2002.
22. On 16 August 2002, following an extension of the respective deadline, the Respondent filed an Answer in accordance with CAS Rule 55, together with 12 exhibits, with a bundle of authorities, and with the Expert Report of Prof. Don H. Catlin.
23. On 28 August 2002, the CAS Court Office received from the Appellants a request for adjournment of the hearing scheduled to be held on 17 and 18 September 2002.
24. The President of the Panel pronounced an Order on 3 September 2002, whereby the hearing scheduled for 17 and 18 September 2002 was cancelled and postponed to a later date to be determined.
25. The hearing in Lausanne was eventually scheduled to be held on 4 and 5 February 2003.
26. By letter dated 18 December 2002, the Appellants requested that a medical expert who had not been involved in this case so far, Dr. Michael Essers, be allowed to bring evidence before CAS. The Appellants also requested that they be authorised to show two video recordings before the Panel at the hearing.
27. The IOC responded to these requests the following day, submitting that Dr. Essers should not be permitted to testify at the hearing and that the two video recordings be declared inadmissible as evidence.
28. By letters dated 9 and 20 January 2003, the CAS Secretary General, on behalf of the President of the Panel, rejected the Appellants' request as to the admission of two video recordings as new evidence. In addition, it was decided to allow the Appellants to file a new witness statement by Dr. Essers and to accept him as an expert witness at the hearing for the description of autologous blood transfusion methods, but also to give the IOC the opportunity to file a complementary Expert Report by Prof. Catlin in answer to Dr. Essers' new statement.
29. These complementary Expert Reports by Dr. Essers and by Prof Catlin respectively were filed with CAS in due course.

§(ii) *The Hearing*

30. The Hearing was held on 4 and 5 February 2003 in the Hotel Royal-Savoy in Lausanne, Switzerland. The Panel was present, assisted by the *ad hoc* clerk, Mr. Laurent Isenegger. Mr. Matthieu Reeb, CAS Secretary General, also attended the hearing.
31. The Appellants were all present, as well as the IOC, represented by Mr. Howard Stupp. The parties were assisted by their respective Counsel, Dr. Klee and Dr. Riess for the Appellants and Mr. Paulsson and Mr. Douglas for the Respondent.
32. The following expert witnesses attended the hearing and were examined by the Panel and the Parties:

 For the Appellants:

 Dr. Michael Essers, Scientific Assistant to the Chair for Naturopathy at the Benjamin Franklin University Clinic, Free University of Berlin.

 For the IOC:

 Professor Don Catlin, M.D., Professor of Medicine and Molecular and Medical Pharmacology; Head of the UCLA Olympic Analytical Laboratory, Los Angeles.
33. The parties did not summon any witnesses, except for the experts. The debates at the hearing proceedings were recorded.
34. Following an introduction by Counsel for each of the Appellants and for the Respondent, the examination and cross-examination of each Appellant and of the Expert witnesses proceeded.
35. At the end of the hearing, the parties orally presented their final arguments and submissions. The Panel then closed the debates and informed the parties that a decision would be rendered in the following weeks.

(iii) *The parties' respective Requests for relief*

(a) *The Appellants*

36. In their written Appeal Briefs, all of the Appellants requested that the respective decisions taken by IOC EB on 26 May 2002 be declared ill-founded and be set aside by the Panel.
37. The Appellants complained that the IOC EB had not taken the expert witness statement of Dr. Frick into due consideration. On the merits, the Appellants based their appeals on the following arguments (i) that the definition of blood doping under the Olympic Movement Anti-Doping Code is unclear, (ii) that it is not conceivable that any blood administration be constitutive of doping, and (iii) that the IOC EB was wrong in saying that the autologous blood therapy performed by Mr. Walter Mayer in this case was to be considered as doping, mainly as such method has no performance-enhancing effects and because it should be considered as a legitimate medical treatment under the circumstances.
38. At the hearing itself, the Appellants also challenged for the first time the applicability of the Olympic Movement Anti-Doping Code in their cases, as well as the competence of the IOC EB to pronounce the decisions of 26 May 2002 against the respective Appellants.

(b) *The Respondent*

39. In its Answer, the IOC confirmed the arguments set out in the Decisions regarding the Appellants of 26 May 2002 and requested that the Appellants' appeal be dismissed, and that the Appellants be obliged to pay all the costs and expenses arising out of this arbitration.
40. Furthermore, the IOC suggested that the Items were not only used for the UV Blood Transfusion as described by Mr Walter Mayer, but rather for "classical" blood doping, i.e. the withdrawal of major quantities of blood at an earlier stage and the re-injection of the blood with the goal of enhancement of oxygen transfer, or to reduce the blood haemoglobin below the cut-off level.

41. At the hearing, the IOC further submitted that the Appellants' opinion on the question of the lack of jurisdiction of the IOC EB to render the decisions at issue should be declared inadmissible, as a result of its having been presented at too late a stage in the proceedings, and in any event should be rejected on its merits.

D Panel's Findings of Relevant Facts

42. At the hearing, Mr. Walter Mayer confirmed that he performed UV Blood Transfusions on his son Marc Mayer on up to four occasions, between 19 January and 3 February 2002, in a chalet in Park City. He also confirmed that he performed one UV Blood Transfusion on Mr. Achim Walcher immediately after the latter's arrival in Utah on 2 or 3 February 2002, also in Park City.
43. According to Mr. Walter Mayer, the Items were put into a plastic bag for later disposal. On 3 February 2002, when Mr. Walter Mayer moved from the chalet in Park City to the chalet in Midway (where the Items were eventually discovered), he took the plastic bag with the Items with him.
44. The Appellants do not dispute that the residuals in the two 500 ml blood bags are Mr. Achim Walcher's and Mr. Marc Mayer's blood.
45. UV Blood Transfusion is a form of autologous blood therapy. It may be described as the process of removing, processing (through UV irradiation), and subsequently re-infusing the subject's own blood. Mr Walter Mayer explained the method as follows:
- The athlete lies on a magnetic field mat.
 - An amount of 45 to 50 ml of blood is taken from the athlete's vein and put into a 500 ml blood bag which contains anti-coagulant liquid.
 - The blood bag is exposed to ultraviolet irradiation during exactly 3 minutes.
 - The blood is passed through a filter. Depending on the particular needs, vitamins or other additives can be added to the blood.
 - The blood is then re-injected into the athlete's vein.

- The same device ("butterfly") is used for the taking and re-injecting of the blood. During or immediately after the irradiation proceeding, this device can also be used to add glucose to the blood circulation.
46. Dr. Essers, in his expert witness statement and during the examination, confirmed the proceeding applied by Mr. Walter Mayer being one of the recognised autologous blood therapies.
 47. The Panel considers that the array of medical garbage found in a closet of the private chalet occupied by Mr. Walter Mayer and some other members of the Austrian cross-country team in Midway is truly disturbing. It is a fact that the assortment of tubes, syringes, bottles and vials contained everything necessary to accomplish classic blood doping. It also contained sodium chloride which could be used to dilute a skier's blood haemoglobin below the cut-off level established by Fédération Internationale de Ski (FIS) for further EPO testing of urine. Also included in this medical waste were vials of iron and folic acid, which could be used to support the administration of EPO.
 48. In his testimony Mr. Walter Mayer denied having ever seen the sodium chloride, iron or folic acid. However, he and his wife lived in the Midway chalet during the entire period the chalet was rented by the Austrians. There is certainly reason to suspect that some form of doping was happening at the Midway chalet at the time.
 49. The IOC's suspicion that the paraphernalia found in the Midway chalet were not utilised for UV Blood Transfusions, but rather for blood doping with the goal of enhancement of oxygen transfer, was further supported by the fact that 500ml bags were found whereas the UV Blood Transfusion, as described above, needed only 45 to 50 mL of blood. Dr. Essers also confirmed that he uses smaller bags in his practice. However, Walter Mayer's explanation that he used larger bags for more surface area to facilitate UV irradiation seems plausible.
 50. The IOC also submits that (i) the amount of blood left in the transfusion equipment was so substantial that it was inconsistent with the UV Blood Transfusion described by Mr. Walter Mayer; and that (ii) the coloration of the blood remaining in the transfusion bags was an indication of transfusions with packed red blood cells. However, the IOC did not ask for an analysis of the blood residuals, so that no conclusions can reasonably be drawn either from the amount of blood left in the tubes and bags, or from the colour of the residuals.

51. Although obviously troubled by the circumstances in which the UV Blood Transfusion was applied and the ensemble of other medical paraphernalia found in the house, which raises serious suspicions of other types of doping, the Panel is not prepared to say that it is comfortably satisfied - given the seriousness of the charge - that other blood manipulations constitutive of classic blood doping (e.g. blood doping with the goal of enhancement of oxygen transfer), masking (e.g. infusions for dilution to avoid detection of prohibited substances or methods) were performed by or with the knowledge of Mr. Walter Mayer.
52. It must be noted that the IOC apparently reached the same conclusion after its investigation, because there is no mention in either the findings of the Inquiry Commission, or in the IOC EB's decisions, that masking or blood doping methods other than the UV treatment admittedly performed by Mr. Walter Mayer were used.
53. The IOC asks the Panel to draw an inference of doping on account of the Austrian Ski Federation's refusal to authorize FIS to provide the IOC with 2000 and 2001 blood test results for all members of the Austrian Ski Team. The Appellants made the blood tests of Marc Mayer and Achim Walcher available. They show no abnormal results. The IOC is also in possession of the blood test results of other Austrian Cross Country Skiers who competed and even won medals at the 2002 Winter Games. These tests have obviously not led to doping procedures. The Panel does not therefore see why any inference of doping should be drawn from the Austrian Ski Federation's refusal to disclose earlier blood test results of other members of the Austrian Ski Team.
54. As regards Dr. Peter Baumgartl, the Panel found that he arrived *on site* at Salt Lake City on the day of the Opening Ceremony of the 2002 Winter Games which was held on 8 February 2002. This was at least four days after Mr. Walter Mayer's last application of UV Blood Therapy on his son and Mr. Walcher. As Chief Medical Officer of the Nordic ski team, his functions consisted mainly of setting up in advance and supervising medical services during the Games to assist the Team members, coordinating doctors and medical care for athletes, and being present at competition venues in case of need. Dr. Baumgartl declared that he was not aware that any blood manipulation procedures had been performed by Mr. Walter Mayer or Mr. Volker Müller at the 2002 Winter Games until after the end of the Games.

55. Concerning Mr. Volker Müller, the Panel found that although accredited with the Austrian Olympic Team as a chiropractor, Mr. Müller is very self-confident as regards his healing abilities and was certainly inclined to perform medical acts on athletes (such as vitamin infusions) despite the fact that he was not entitled to do so. Mr. Müller appeared to the Panel as being reluctant to any kind of supervision by medical staff. Nevertheless, the Panel is willing to accept Mr. Müllers testimony at the hearing that he performed no autologous blood treatments on athletes while in Utah for the Olympic Games. However, Mr. Müller admitted, that he continued to treat several of his regular patients (including athletes from other national teams) also during his presence at the 2002 Winter Games. These treatments included also the application of injections.

II. LEGAL DISCUSSION

E Jurisdiction of CAS

56. The jurisdiction of the CAS *in casu* results
- (a) from the entry form for the Winter Games 2002 signed by the Appellants (the "Entry Form");
 - (b) from Chapter III, article 1 of the OMAC, it being reiterated that any participant affected by a decision rendered in application of this Code by the IOC, an International Federation, a National Olympic Committee or other body may appeal from that decision to CAS, in accordance with the provisions applicable before such court;
 - (c) from Rule 47 of the Olympic Charter, which states:

"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."
 - (d) from the signature on behalf of the Appellants of the Order of Procedure.

57. The Appellants claim that the IOC EB was not competent to hear the case and sanction the Appellants. However, the jurisdiction of CAS does not depend on the answer to that question but is in fact based on every single provision listed above.

F Applicable Rules

58. The primary source of law is the Olympic Charter. Certain specific rules are set out in the OMAC as issued and amended in 1999, including Appendix A (Prohibited Classes of Substances) as amended from time to time and the Explanatory Memorandum to the OMAC. The OMAC has been accepted by the Appellants when they signed the Entry Forms. With respect to its applicability, the OMAC states on page 5, paragraph 5:

"Whereas the Olympic Movement Anti Doping Code applies to the Olympic Games, the various championships and all competitions to which the International Olympic Committee (IOC) grants its patronage or support and to all sports practised within the context of the Olympic Movement, including pre-competition preparatory periods."

59. The fact that the UV-Blood Transfusions were performed before the Opening Ceremony of the 2002 Winter Games does not stand in the way of the application of the OMAC. The expression "during the Olympic Games" has been defined in the "Explanatory Memorandum concerning the application of the Olympic Movement Anti-Doping Code", 1999, p. 5:

"During the Olympic Games" means the period starting with the official opening of the Olympic Village (. . .) whether or not the athlete is there (. . .)."

60. The Olympic Village for the 2002 Winter Games was opened on 25 January 2002. At least with respect to the UV-treatments applied on Marc Mayer and Achim Walcher on or after 25 January 2002, the OMAC is undoubtedly applicable.
61. In addition, the OMAC is also applicable during the "pre-competition preparatory periods." In the context of the Olympic Games, such preparatory period must be understood to comprise at least the period during which an athlete is preparing *on site* for the Olympic competitions, thereby utilizing the infrastructure of the Olympic Games (e.g., accreditation, transportation, designated training sites).

62. The World Anti Doping Code ("WADC") referenced by Appellants has only recently been approved and is therefore not applicable in the present case. Further, the provision in the WADC relied on by the Appellants has subsequently been changed. The Panel will also not base its decision on the Medical Guide of the FIS which is superseded by the OMAC during the Olympic Games.

G Main Issues

63. The main issues to be resolved by the Panel are:
- (a) Was the IOC EB competent to issue a sanction against the Appellants?
 - (b) If yes: Did the IOC EB violate the minimum requirements regarding due process by not explicitly referring to the witness statement of Dr. Frick ?
 - (c) Does the UV-Blood Transfusion as admittedly performed by Mr. Walter Mayer qualify as Prohibited Method according to the OMAC ?
 - (d) If yes: Does the UV-Blood Transfusion as performed by Mr. Walter Mayer have to be considered as legitimate medical treatment ?
 - (e) If UV-Blood Transfusions as performed by Mr. Walter Mayer are considered as a prohibited method: did Dr. Peter Baumgartl or Mr. Volker Müller facilitate the use of doping?
 - (f) Do the treatments performed by Mr. Volker Müller at the 2002 Winter Games have to be considered infractions on regulations applicable during these Games?

H Lack of Competence of the IOC Executive Board ?

64. The Appellants assert that the IOC EB was not competent to render a decision because the UV-treatment did not occur "during the Games." This issue was not raised in the Appellants' hearing before the IOC EB, nor was it raised in any of the briefs filed in connection with the Appellants' appeals. The respective objection was only made in the opening statement of Appellants' Counsel and accordingly is not admissible (R56 of the Code).

65. The argument fails also on the merits: the competent body to decide upon a sanction "in the context of the Olympic Games" is the IOC EB, as defined in Rule 25, para. 2.2 of the OC. Furthermore, the IOC Executive Board is also the "authority responsible" for the enforcement of the OMAC as clarified in the Explanatory Memorandum, p. 5 second last paragraph.
66. The Appellants suggest by referring to Chapter VI, Article 4 of the OMAC, that the IOC EB should have requested the advice of the IOC Medical Commission before imposing a sanction for doping. The Panel disagrees. Firstly: This objection was also not raised in good time (i.e. in the written submissions). Secondly: The IOC EB based its decision on a thorough report of an ad hoc Inquiry Commission which consisted of two learned members of the IOC Medical Commission (Denis Oswald and Patrick Schamasch, IOC Medical Director). There was no need to request further members of the IOC Medical Commission for advice.
67. The IOC EB was therefore competent to render a decision with respect to the behaviour of the Appellants.

I Witness Statement of Dr. Frick

68. The Appellants complain that the decision of the IOC EB did not explicitly refer to the witness statement of Dr. Frick. However, according to the Appeal Briefs, this witness statement was submitted to the IOC EB before the hearing in Kuala Lumpur, and the Appellants' Counsel "quoted certain statements made by the medical expert Gerhard Frick." The Panel is therefore satisfied that the Appellants' procedural rights have been sufficiently observed. Due process does not require that all documents submitted to a sanctioning body must be quoted in the written decision. In any event, since the Panel has the power to review the case *de novo* (R57 of the Code), any procedural deficiency may be cured in the appeals procedure.

J Does the UV Blood Transfusion qualify as Blood Doping?

69. The relevant definitions in the OMAC are the following:

Article 1

DEFINITIONS

Blood Doping means the administration of blood, red blood cells and related blood substances to an athlete, which may be preceded by withdrawal of blood from the athlete who continues to train in such a blood-depleted state.

Chapter II

Article 1

- 1. Doping contravenes the fundamental principles of Olympism and sports and medical ethics.*
- 2. Doping is forbidden.*
- 3. Recommending, proposing, authorising, condoning or facilitating the use of any substance or method covered by the definition of doping or trafficking therein is also forbidden.*

Article 2

Doping is:

- 1. the use of an expedient (substance or method) which is potentially harmful to athletes' health and/or capable of enhancing their performance, or*
- 2. the presence in the athlete's body of a Prohibited Substance or evidence or the use thereof or evidence of the use of a Prohibited Method.*

Appendix A Prohibited classes of substances and Prohibited Methods

II Prohibited Methods

The following procedures are prohibited:

1. *Blood doping*

2. *Pharmacological, chemical and physical manipulation*

70. The UV Blood Transfusion includes the administration of blood to an athlete. If read literally, the definition of Blood Doping (Chapter 1, Article 1 of the OMAC) is undoubtedly met, irrespective of the amount of blood withdrawn and re-injected. The second half-sentence (" . . . which *may* be preceded by withdrawal of blood from the athlete who continues to train in such a blood-depleted state" [emphasis added]) is not a necessary element of that definition but must only be understood as one example of Blood Doping. It makes clear, however, that the definition includes the administration of the athlete's *own* blood as well.
71. The "evidence of the use of a Prohibited Method" qualifies as Doping (Chapter II, Article 2, para. 2). Blood Doping is a Prohibited Method as defined in Appendix A, Chapter II of the OMAC. Once a certain method is identified as Prohibited Method, it must be considered as doping whether or not it is potentially harmful to athletes' health and/or capable of enhancing their performance (Chapter II, Article 2, para 1). These additional attributes apply only to substances or methods not listed as Prohibited Substances or Prohibited Methods in Appendix A to the OMAC. Having identified UV Blood Transfusion as a Prohibited Method, there is no need to investigate further whether it may harm the athletes' health or enhance their performance.
72. However, both parties suggest that the Panel ought to read Chapter I Article 1 of the OMAC "intelligently" so that it would not apply, e.g., to the administration of blood via transfusion during surgery at a hospital or other circumstances in which blood transfusions must be considered as legitimate medical treatment. That is why the definition of Blood Doping has been amended in Appendix A of the OMAC as per 1 January 2003:

II *Prohibited Methods*

The following procedures are prohibited:

A. *Enhancement of Oxygen Transfer*

a. *Blood doping*

Blood doping is the administration of autologous, homologous or heterologous blood or red blood cell products of any origin other than for legitimate medical treatment. (emphasis added)

73. The Panel is ready to accept, in principle, the legitimate medical treatment-reservation either as an implied element of the definition of Blood Doping in the OMAC in force at the 2002 Winter Games, or by reference to the amended definition of Blood Doping of 1 January 2003 quoted in paragraph 72 above, thereby relying on the *lex mitior*-principle as applied by analogy e.g. in TAS 96/156, F. c/FINA.

K The Legitimate Medical Treatment-provision

74. The administration of blood, allegedly for legitimate medical purposes may be abused as an alibi for illegal purposes such as blood doping, performance enhancing or masking of prohibited substances or methods. The conditions under which a certain medical treatment, which would otherwise fall under the definition of doping, may be justified are truly exceptional and must therefore be demonstrated by the athlete or the person performing such treatment. To determine whether a certain medical treatment is legitimate under the OMAC, the Panel applies the following test:
- (a) The medical treatment must be necessary to cure an illness or injury of the particular athlete;
 - (b) Under the given circumstances, there is no valid alternative treatment available which would not fall under the definition of doping;
 - (c) The medical treatment is not capable of enhancing the athlete's performance;
 - (d) The medical treatment is preceded by a medical diagnosis of the athlete;
 - (e) The medical treatment is diligently applied by qualified medical personnel in an appropriate medical setting;
 - (f) Adequate records of the medical treatment are kept and are available for inspection.
75. To determine whether a certain cure may be considered as a legitimate medical treatment, it is indispensable for any person performing medical or para-medical services to be familiar with the OMAC. Ignorance is not an excuse but constitutes a substantial risk especially for the athletes. In the event of doubt and to avoid the risk

of doping allegations, the medical staff of the NOCs are strongly advised to contact the IOC Medical Commission in time and seek its approval.

L Was the UV Blood Transfusion Performed by Walter Mayer on Marc Mayer and Achim Walcher a Legitimate Medical Treatment?

76. The Panel has no basis to put into question that UV Blood Transfusion appears to be the only effective relief against the neurodermatitis of Marc Mayer. There was no comparable explanation for the UV Blood Transfusion. Indeed, Mr Walcher's condition was described in the Appeal Brief as "severe nausea" and "problems with his bronchial system", which was not sufficiently serious for him to seek any other medical treatment.
77. The Panel also accepts that the UV Blood Transfusion as described by Walter Mayer and Dr. Essers is hardly capable of enhancing an athlete's performance.
78. However, the Panel finds that in this case the other indicia of legitimate medical treatment were not met: The UV Blood Transfusions were administered in a private chalet by a coach with no medical support and without supervision of, or disclosure to, the team doctor, the IOC Medical Commission or the team management. The UV Blood Transfusions were not even documented by proper records. The strange circumstances under which the blood manipulations were carried out combined with the fact that such manipulations were performed on endurance athletes created inevitably a massive suspicion of some other forbidden doping techniques. If UV Blood Transfusions were to be tolerated under such circumstances, this would be an invitation for all kinds of uncontrollable blood manipulations with the ultimate aim of performance enhancement.
79. The Panel concludes that the UV-Blood Transfusion administered by Walter Mayer on Marc Mayer and Achim Walcher in the Park City chalet did not meet the above test for legitimate medical treatment (paragraph 74 above) and must therefore be considered as blood doping.
80. Although the UV Blood Transfusion is certainly on the fringe of ordinary medicine, the Panel is not prepared to say that it can *never* be a legitimate medical treatment. Indeed, as Dr. Essers testified, it is used by more than a thousand medical doctors in Germany and is practised and taught at his University. However, when exercising such

methods which are not (yet) recognised as part of "school medicine", a medical practitioner has to be particularly careful to avoid any suspicion of prohibited activities.

M Issues specific to Walter Mayer

81. It is established that Walter Mayer administered a Prohibited Method under the OMAC. He professed ignorance of the OMAC and the articles prohibiting Blood Doping. This ignorance is totally inconsistent with his high position in a sport where manipulation of blood is the greatest threat to the integrity of sporting competition. It is particularly incredible that in light of his professed ignorance he took it upon himself to perform medical techniques related to the withdrawal and re-administration of blood.
82. In some respects Walter Mayer's explanation for administering ultraviolet autologous blood treatment to his son is compelling. He describes his son as a toddler whose skin condition was diagnosed as incurable by modern medicine and who had to be handcuffed to his bed to prevent him from scratching his skin off. Certainly any father would want to do everything possible to cure his son. The circumstances here, however, are not so simple. His son did not receive his first autologous blood treatment until 2000. Somehow he had managed to be a competitive cross-country skier for several years before that. Further, this was not just any alternative medical treatment, it involved the administration of blood to an endurance athlete in a sport where every participant's intuition would have told him that at a minimum this is all going to look incredibly suspicious. Indeed, Marc Mayer even discussed with his father whether the UV Blood Transfusion was legal under applicable anti-doping rules. Walter Mayer did nothing to confirm that it was.
83. Mr. Walter Mayer holds a position of substantial authority within the Austrian cross-country ski program. He was a successful competitor, a national team coach and the team manager for the Austrian cross-country ski team. In his own words he was the "boss." With this authority comes the responsibility to look after the young athletes who have been entrusted to his care. It is obvious, based on the medical paraphernalia found in the closet of the Austrian cross-country team's Midway chalet, that some very suspicious activities were taking place. Mr. Mayer's denial of any knowledge of much of this equipment found in the house in which he lived and where he was supposed to be supervising the athletes who also were there is certainly irresponsible

even if it does not rise to the level of a provable doping violation. The administration of a prohibited method to young athletes who put their trust in him to know what he was doing, with the resulting consequences on their lives, is inexcusable.

84. The Panel finds the conduct of Mr. Walter Mayer incredible. He was described as having been involved in the sport of cross-country skiing all his life. It was also stated that as a competitor he had been the victim of other competitors who cheated using blood doping. Indeed, anyone who has any knowledge or involvement with the sport of cross-country skiing knows that the manipulation of blood to increase oxygen-carrying capacity has been and continues to be a serious problem in that sport and other endurance sports. In these same Olympic Games three other cross country skiing athletes were sanctioned for the use of darbepoetin to enhance the oxygen-carrying capacity of their blood. Thus anyone who is engaged in the manipulation of a cross-country skier's blood should know that they are entering into extremely dangerous territory as far as doping is concerned. Mr. Mayer's failure to talk with any sporting official at the Olympic Games or otherwise about whether this method was permissible under anti-doping rules is almost inconceivable and is certainly inexcusable.
85. Walter Mayer's use of this method on Achim Walcher is particularly egregious. Mr. Walcher's symptoms were not acute. During the hearing, they were described as "parched throat." These symptoms were apparently not severe enough for Mr. Walcher to seek real medical treatment either before he left for the 2002 Winter Games or after he arrived in Utah. While Mr. Walcher probably should have known better, he trusted in his long-time coach who, as counsel for the Appellants pointed out, was sometimes referred to as "father Mayer" by Mr. Walcher in his testimony.
86. Walter Mayer has applied a Prohibited Method to athletes and thereby violated Art. 1.2, Chapter II of the OMAC in the context of the Olympic Games. The Panel sees no reason to reduce the severe sanction imposed by the IOC Executive Board (i.e. ineligibility to participate in all Olympic Games up to and including the Olympic Games held in 2010).

N Issues Specific to Marc Mayer and Achim Walcher

87. As a result of the Panel's finding that the UV Blood Transfusion employed by Walter Mayer on Marc Mayer and Achim Walcher was blood doping as defined in the OMAC, they must be considered to have doped by using a Prohibited Method.
88. In this case and under these circumstances both Marc Mayer and Achim Walcher should have had some suspicion that a method in which their blood was removed, manipulated and re-injected might run afoul of anti-doping rules. Indeed Marc Mayer was discerning enough to raise this question with his father. However, the Panel agrees with the IOC's conclusion that it is Walter Mayer and not the athletes who are the real culpable party in this situation.
89. The UV Blood Transfusion was administered during the Olympic Games but out-of-competition. The question is whether Chapter II, Article 3(3) of the OMAC applies:

"Any case of doping during a competition automatically leads to an invalidation of the result obtained (with all its consequences, including forfeit of any medals and prizes) . . ."
90. The Panel shares the holding in CAS 2002/A/374 Muehlegg v/IOC, Section VII. The Panel in Muehlegg concluded by reference to Chapter II, Article 3(3) of the OMAC ("The penalty for an offence committed by a competitor and detected on the occasion of an out-of-competition test shall be the same, *mutatis mutandis*, . . ."), "that where an athlete commits an out-of-competition doping offence, at least all the results obtained after the date the sample was taken shall be invalidated." This must be equally true if the doping offence consisted of the application of a Prohibited Method instead of a Prohibited Substance.
91. The same conclusion results from the application of the Olympic Charter. The doping offence took place during the Olympic Games, and therefore the Olympic Charter is applicable. There is no question that the use of a Prohibited Method during the Olympic Games is an infringement of the Olympic Charter. Rule 50 of the Olympic Charter says:

"50. Infringement of the Olympic Charter

The IOC Executive Board may withdraw accreditation from any person who infringes the Olympic Charter. Furthermore, the competitor or team at fault

shall be disqualified and lose the benefit of any ranking obtained; any medal won by him or it shall be withdrawn, as well as any diploma which has been handed to him or it."

92. Thus, the consequence of Messrs. Marc Mayer and Achim Walcher having used a Prohibited Method during the Olympic Games is their automatic disqualification from the 2002 Winter Games including all results.

O Issues specific to Dr. Peter Baumgartl

93. The statements of the parties led the Panel to conclude that the Austrian medical team at the Salt Lake Olympic Games was, to put it in the most favorable light, not well organized. Dr. Baumgartl was in charge of supervising the team of doctors present at the Games but the athletes preferred treatment from chiropractors like Mr. Müller, other paramedical personnel and coaches like Mr. Mayer who had no formal medical training whatsoever. This anomalous situation was compounded by the apparent fact that according to both Dr Baumgartl and Mr. Müller "no one" supervised the chiropractors and other paramedical personnel! The victims of this dysfunctional system were the athletes. In the words of Alexander Marent, another Austrian athlete whose signed statement was presented to the Inquiry Commission: "We do not have a team doctor at our disposal and therefore we have to find our own ways to be properly treated."
94. Dr. Baumgartl's testimony indicated that he was oblivious to the medical reality of the cross-country ski team for which he was the specific doctor responsible. He testified that he had no knowledge of post-race infusions of glucose by Austrian cross-country skiers and yet the two athletes before the Panel, Marc Mayer and Achim Walcher, both said they received post-race infusions of glucose and, judging from the bag of medical paraphernalia found in the closet of the Midway chalet, other Austrian cross-country skiers did as well. It is ironic that Dr. Baumgartl went to the Midway chalet on two or three occasions for dinner, apparently unaware of all of the non-medically-supervised injections and infusions that were taking place in the house.
95. The Panel does not find it acceptable that Dr. Baumgartl as the chief medical official of the Austrian Team would be content to remain blissfully ignorant or turn a blind eye toward the paramedical or non-medical treatment of Austrian cross-country skiers. His explanation that he unsuccessfully asked the Austrian Olympic Committee for the names of the chiropractors attending the Games falls short of a satisfactory response.

96. Certainly the Austrian Olympic Committee is partly to blame for the disfunctional organization of the Austrian medical program at the Games. However, the Panel is also convinced that Dr. Baumgartl's personal conduct was not up to the standard which the IOC is entitled to expect from a doctor to whom it has issued a medical credential for the Games. Obviously, he was not sufficiently aware of the particular needs of the athletes and tolerated their receipt of medical treatment without any supervision from a physician. Such behaviour is not in accordance with the Ethical Guidelines for Health Care in Sports Medicine in the Medical Care Guide for the Salt Lake 2002 Olympic Winter Games ("Medical Care Guide"), and in particular, the following provisions thereof:

1. Introduction

(. . .)

Health care professionals travelling with their National Olympic Committees (NOC) will be exempt from Utah state license requirements allowing them to provide medical services to members of their own delegation

3. Ethical Guidelines for Health Care in Sports Medicine

1. *All physicians who care for athletes have an ethical obligation to understand the physical, mental and emotional demands placed upon athletes during the training for and participation in their sports.*

(. . .)

4. *It is the responsibility of all physicians to be cognizant of the changes that occur in the medical management of the athletes. This is to ensure that physicians provide optimal care for the athletes.*

(. . .)

9. *The team or contest physician is responsible for determining whether an injured athlete may continue to compete. This responsibility should not be delegated to other professionals or personnel. These professionals, in the physician's absence, must adhere strictly to the provided guidelines. At all*

times, the priority must be safeguarding the athlete's health and security. The potential outcome of a competition must never influence such decisions.

(...)

11. A physician who opposes a procedure should inform the athlete and other relevant parties of the procedure's consequences. The physician should guard against the procedure's use by others, enlist the support of other physicians and organisations with similar aims and protect the athlete from any pressures that may induce him or her to use these methods.

(...)

13. To undertake these ethical obligations, the physician must insist on professional autonomy over all medical decisions concerning the health and the safety of the athlete, neither of which should be compromised to assist the interest of any third party.

97. The Medical Care Guide requires the responsible team physicians to be immediately engaged in the medical treatment of the entrusted athletes, either by their own involvement or by adequate supervision of medical personnel. By tolerating the performance of medical services by physiotherapists such as Volker Müller in violation of the Medical Care Guide (i.e., illegal injections; treatment of athletes of other NOC delegations), or even of coaches without any supervision by a physician, Dr. Baumgartl did not act in accordance with these Ethical Guidelines. His excuse, that he felt responsible only for doctors and not for other members of the Austrian team who performed medical or para-medical services on athletes, is not acceptable.

98. According to Rule 6.12 of the Olympic Charter, the IOC EB

6.1.2 (it) enacts, in the form it deems most appropriate, (codes, rulings, norms, guidelines, instructions) all regulations necessary to ensure the proper implementation of the Olympic Charter and the organisation of the Olympic Games;

99. Rule 25 of the Olympic Charter says:

2.2 *[Measures and Sanction] in the context of the Olympic Games:*

2.2.2 *with regard to officials, managers and other members of any delegation as well as referees and members of the jury: temporary or permanent ineligibility or exclusion from the Olympic Games (Executive Board)*

3. *Before applying any measure or sanction, the competent IOC organ may issue a warning.*

100. In order to ensure the proper organization of the medical services at the 2002 Olympic Games, the Panel finds that the IOC EB was entitled to issue Guidelines such as the Medical Care Guide and to impose a sanction in the event of a violation of the Guide. The strong warning issued by the IOC EB to Dr. Baumgartl is not an excessive disciplinary sanction in the circumstances.

101. The allegation of the IOC that a physician has facilitated doping is a very serious allegation. Indeed, in the Panel's view it is not one which would warrant only a "strong warning." The Panel is satisfied, however, that Dr. Baumgartl did not commit a doping offence by facilitating doping committed by any of the other Appellants. Facilitating doping by passivity (in other words: to tolerate doping) requires at least that one is or should be aware of the application of prohibited substances or methods. The Panel is not convinced that Dr. Baumgartl knew or should have known that Walter Mayer would be performing UV Blood Transfusions during the Games. Indeed, the only treatments which Mr. Mayer admitted, took place *before* Dr. Baumgartl's arrival in Utah. Even if Dr. Baumgartl had an obligation to supervise the medical services performed by team members other than physicians, he was not obliged, either by the OMAC or by the 2002 Salt Lake Medical Care Guide, to actively launch an investigation into charges of doping without any further indications.

P Issues specific to Volker Müller

102. The evidence before the Panel is that Mr. Müller is a gifted healer. Dr. Baumgartl described him as having "blessed hands." Dr. Baumgartl himself, as well as many well-known athletes and other individuals, have sought treatment from Mr. Müller at his office in Bayrischzell, Germany.

103. Mr. Müller is not a certified physician. He is licensed in Germany as a certified *Heilpraktiker*. This license apparently allows him to perform physiotherapy, chiropractic techniques and to give injections. As a non-medical practitioner, he would not be allowed to give injections in either Austria or the state of Utah (Occupational and Professional Licensing Act 1993, Utah Code § 58-1-501 (1) (a)). As reflected in the Salt Lake 2002 Medical Care Guide, an exemption was obtained to the Utah Occupational and Professional Licensing Act prohibiting the unauthorized practice of medicine for the benefit of healthcare professionals attending the Games (Utah Code Ann. § 58-1-307 (1)(h): Exemptions from licensure):

(1) Except as otherwise provided by statute or rule, the following persons may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:

(h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity as a spectator;

104. However, this exemption only applied to healthcare professionals performing services on their own team members and as allowed by the laws of their team's country (Medical Care Guide, Article 5):

"(. . .) This legislation will enable team health care professionals to:

- Treat members of their team*
- Use pharmaceutical from the team's supply*
- Prescribe medication for members of their team, if current professional license allows. "*

105. In violation of this exemption, Mr. Müller performed services on athletes from other countries. He also gave injections to athletes which he would not have been permitted to do under Austrian law.

106. Although Mr. Müller had apparently already treated many of the athletes who sought his services at his office in Bayrischzell, and his purpose was undoubtedly only to help, his unauthorized practice of medicine in Utah is nonetheless a serious matter. Mr. Müller's presence in Salt Lake City and his access to athletes was under the

auspices of his IOC credential. He certainly should have known that there was a serious legal issue with him giving injections outside of Germany and treating athletes from countries other than Austria.

107. Mr. Müller's testimony also left the Panel with the impression that he is sufficiently confident in his healing abilities and that he might not be overly concerned about the technical niceties of medical licensing ("nobody supervises me"). The Panel concludes that the rather liberal way in which Mr. Müller provided medical and para-medical services to athletes of various countries was not in accordance with the Salt Lake Medical Care Guide and so a strong warning is justified (for the legal base of such sanction, see also paragraph 100 above).
108. However, the Panel is not satisfied that there is sufficient evidence to find that Mr. Müller engaged in doping in connection with the 2002 Winter Games. Mr. Müller testified that he had nothing to do with the paraphernalia found in the chalet in Midway and that he did not perform any type of autologous or other blood manipulation while he was at the 2002 Winter Games. The Panel was not presented with sufficiently concrete evidence to the contrary to cause it to disregard his testimony.
109. The autologous blood method used by Mr. Müller in his practice at home is considerably different from the UV blood transfusion used by Walter Mayer. The method used by Mr. Müller does not involve all of the paraphernalia commonly associated with classic blood doping. His testimony was that his typical technique was to remove several drops of blood from a vein and re-inject it into the *gluteus maximus* as an irritant. While this technique may run afoul of the literal language of the OMAC's definition of blood doping, it is not nearly as susceptible to all of the masking or alibi concerns as the method employed by Walter Mayer. However, there is no need to investigate further whether such autologous blood method falls under the definition of doping or whether such method, applied by Mr. Müller in his practice in Bayrischzell must be considered as legitimate medical treatment, since there was no evidence presented that during the 2002 Winter Games Mr. Müller actively "recommended" or "proposed" the use of such autologous manipulations or any other methods covered by the definition of doping. While the Panel does not believe that the behaviour of Mr. Müller in Salt Lake would justify a more severe sanction than a strong warning, the IOC is, of course, still free to refuse accreditation to further

Olympic Games if there were indications that Mr. Müller would continue to evade supervision of the medical team management.

Q Costs

110. Pursuant to R65.1 and R65.2 of the Code, proceedings before the Appeals Arbitration Division of the CAS are free, apart from the Court Office Fee of CHF 500 paid by an appellant upon submission of the Statement of Appeal. This is retained by the CAS.

111. The Panel may allocate the legal costs related to an appeal according to R65.3:

The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.

112. The outcome of the proceedings is that only Mr. Müller's appeal has been partially successful. With regard to the conduct of the parties, the athletes and Dr. Baumgartl has shown themselves to be co-operative, whereas Walter Mayer in particular, despite the clear evidence against him, did not seem to understand or even regret the incriminated behavior. No evidence has been presented with respect to the financial resources.

113. On the other hand, the IOC has undertaken considerable efforts to investigate and establish the facts in a thorough and fair manner before it rendered its decision. It also responded in great detail to all submissions of the Appellants. Such efforts should at least partially be reimbursed by the Appellants.

114. Compared to the costs contributed in other CAS proceedings of similar complexity, the Panel considers a contribution in favor of the Respondent in the amount of CHF 10.000 fair and appropriate. Taking the considerations in paragraph 112 into account, this amount is allocated to the Appellants as follows: Walter Mayer CHF 3.000; Marc Mayer, Achim Walcher and Dr. Baumgartl CHF 2.000 each, and Volker Müller CHF 1.000.

III. DECISION

The Court of Arbitration for Sport hereby rules:

1. The Appeals filed by Walter Mayer, Marc Mayer, Achim Walcher and Dr. Peter Baumgartl are dismissed.
2. The Appeal filed by Volker Müller is partially upheld.
3. The CAS renders the following decision:

The ineligibility of Volker Müller to participate in all Olympic Games up to and including the Olympic Games held in 2010 is replaced by a strong warning.
4. The Court Office fee of CHF 500.-- per Appellant remains with the Court Office. The Award is rendered without further costs.
5. The Appellants shall pay to the Respondent as contribution towards its expenses the following amounts:

Walter Mayer CHF 3.000.--, Marc Mayer, Achim Walcher and Dr. Peter Baumgartl CHF 2.000.-- each, and Volker Müller CHF 1.000.--.

Lausanne, 20 March 2003

THE COURT OF ARBITRATION FOR SPORT

President of the Panel

Stephan Netze

Dirk-Reiner Martens
Arbitrator

Richard Young
Arbitrator

Ad hoc Clerk

Laurent Isenegger