

IN THE MATTER OF

**AN ARBITRATION UNDER THE ULTIMATE FIGHTING CHAMPIONSHIP
("UFC") ANTI-DOPING POLICY ("UFC ADP")
PURSUANT TO THE UFC ARBITRATION RULES**

BETWEEN

FELIPE OLIVIERI ("Olivieri")

Applicant

and

UNITED STATES ANTI-DOPING AGENCY ("USADA")

Respondent

AWARD

1. INTRODUCTION

1.1. There was a lengthy process leading up to the parties agreement that this matter ought to be determined on the submissions filed. This is the second proceeding to be adjudicated before the UFC Arbitration Panel administered by McLaren Global Sport Solutions Inc. (“MGSS”).

1.2. The Applicant was provisionally suspended for an Anti-Doping Policy Violation (“ADPV”) ¹ on 10 March 2016.

1.3. The Applicant contends that this matter ought to be dismissed and a declaration made that there has been no ADPV. It is submitted that (i) the chain of custody of the sample is breached; (ii) the laboratory which carried out the analysis of the sample has lost its accreditation; and, (iii) the laboratory contaminated the sample in the course of its analysis. For those three reasons the present adjudication ought to be dismissed.

2. THE PARTIES

2.1. The Applicant is a 31-year old mixed martial arts (“MMA”) fighter. Olivieri signed with the UFC on 1 October 2015. Since that date he has been subject to the UFC Anti-Doping Policy (“ADP”). He lives in Rio de Janeiro, Brazil. The Applicant is represented by Mr. Leonardo Neri Candido de Azevedo attorney-at-law.

2.2. The Respondent is an independent, non-profit, non-governmental agency whose sole mission is to preserve the integrity of competition, inspire true sport and protect the rights of clean athletes. It independently administers the year-round, anti-doping program for the UFC, which includes the In and Out-of-Competition testing of all UFC athletes. The Respondent is represented by Mr. William Bock III and Mr. Onye

¹ All capitalized words or acronyms take their defined meaning from this text or the Policy Definitions.

Ikwuakor, counsels for USADA, in Colorado Springs, Colorado, U.S.A.

3. MATTERS SUBJECT TO ARBITRATION

3.1. The UFC has adopted the rules, policies and procedures set forth in the UFC ADP. Any asserted anti-doping policy violation arising out of the policy or an asserted violation of the anti-doping rules set forth in that policy shall be resolved through the Results Management Process described in the policy and the pertinent arbitration rules ("the Arbitration Rules") adopted by the UFC.

3.2. Arbitration pursuant to the Arbitration Rules shall be the exclusive forum for any appeal or any complaint by any athlete to (i) appeal or contest USADA's assertion of an ADPV; or (ii) any dispute that the UFC or USADA and the Chief Arbitrator determine is one over which the UFC has jurisdiction and standing and the Chief Arbitrator has agreed to appoint an arbitrator.

3.3. The UFC has in the Arbitration Rules selected MGSS to administer those Arbitration Rules.

4. FACTUAL HISTORY

4.1. On 1 July 2015 the UFC ADP entered into force and USADA became the independent administrator of the UFC Anti-Doping Policy.

4.2. On 30 September 2015 USADA added the Applicant to the UFC Registered Testing Pool ("RTP"), thereby requiring him to complete an online educational tutorial and regularly to provide USADA with his whereabouts information in order to allow USADA to locate him for no advance notice Out-of-Competition testing.

4.3. On 1 October 2015 the UFC finalized its Promotional Agreement with the Applicant. As a result the Applicant was placed under the jurisdiction of the UFC ADP.

4.4. On 5 October 2015 the Applicant made his quarterly Whereabouts Filing under the requirements of the RTP and the UFC ADP.

4.5. On 11 January 2016 USADA conducted an Out-of-Competition test on the Applicant for the first time. USADA requested that sample collection be carried out on its behalf by the National Anti-Doping Organization for Brazil, Autoridade Brasileira Controle Dopagem (“LBCD”).

4.6. The Applicant was located for testing at the New Union Academy based upon his Whereabouts Information he had submitted to USADA in his quarterly Whereabouts Information Filing. Notification of the desire to test was made by LBCD at 9:38 a.m. and sample #1579622 (the "Sample") was provided. At the time the Applicant declared the use of four (4) substances. The Doping Control Officer (“DCO”) and the Applicant signed off on the control process at 11:25 a.m. and acknowledged that the sample collection process was carried out in accordance with the relevant procedures.

4.7. The DCO personally delivered the sample to the World Anti-Doping Agency (“WADA”) accredited laboratory in Rio de Janeiro (the “Rio Laboratory”) after completion of the doping control procedure.

4.8. The Rio Laboratory records indicate that the Sample was received there at 2:23 p.m. and placed in cold storage at 3:03 p.m.

4.9. The Applicant’s brother had died five days before the Out-of-Competition test. The Applicant had a motorcycle accident and was physically weak at the time of the LBCD visit having travelled across the city to reach the New Union Academy. The Applicant also had to attend the USA Consulate the day of the test for the acquisition of a visa to attend a scheduled match on 30 January 2016 in New Jersey. Despite all of these adversities the Applicant fulfilled his responsibilities and did not seek to shelter behind them and not provide the Sample because of the adversities. Thus, there was no Whereabouts Failure or refusal to submit to Sample collection.

4.10. On 30 January 2016 the Applicant had his first UFC match against Tony Martin in New Jersey, USA. He was defeated in the 3rd round by TKO after suffering a rear naked choke. The In-Competition Sample provided after the fight was negative for any Prohibited Substance.

4.11. On 4 March 2016 the Rio Laboratory reported to USADA that the contents of

the A bottle for Sample #1579622 tested positive for the presence of methyltestosterone metabolites, 5alpha-tetrahydromethyltestosterone and 5beta-tetrahydromethyltestosterone.

4.12. On 10 March 2016 USADA notified the Applicant of the ADPV for the presence of methyltestosterone metabolites in his urine Sample. As a result a provisional suspension was imposed against him.

4.13. At the request of the Applicant the B sample bottle was opened and tested for prohibited substances. On 23 March 2016 the Rio Laboratory reported that the analysis of the B Sample had confirmed the presence of 5alpha-tetrahydromethyltestosterone and 5beta-tetrahydromethyltestosterone in the Applicant's urine Sample #1579622.

4.14. On 29 March 2016 USADA informed the Applicant of the B Sample confirmation and formally charged him with an ADPV for the presence of a prohibited substance (or its markers or metabolites) in his Sample in violation of UFC ADP 2.1 and a violation for use or attempted use of a banned performance enhancing drug contrary to UFC ADP 2.2. The Applicant was advised that USADA was seeking the standard two (2) year period of Ineligibility against him for his doping offense and that the sanction could be increased to up to four (4) years if aggravated circumstances were found.

5. PROCEDURAL HISTORY

5.1. On 4 May 2016 the Applicant, through his attorney, advised USADA that he wished to exercise his right to contest the asserted UFC ADP violations and resulting sanctions. A hearing was requested under the UFC ADP Arbitration Rules.

5.2. On 16 May 2016 the attorney for the Applicant submitted the Request for Arbitration form to MGSS. The Chief Arbitrator was appointed to adjudicate the matter.

5.3. On 24 May 2016 following the request of the Applicant's attorney the laboratory's technical documents for Sample #1579622 were provided.

5.4. On 24 June 2016 WADA issued a press release announcing that it had suspended the accreditation of the Rio Laboratory “due to a non-conformity with the International Standard for Laboratories” (“ISL”).

5.5. Following the announcement the Applicant’s attorney informed USADA that they were no longer considering testing the Applicant’s supplements that had been listed on the Doping Control form because they believed the Sample had been mishandled by the Rio Laboratory staff and the Sample’s chain of custody had been compromised. In support of that position, the attorney referenced WADA’s announcement regarding the Rio Laboratory’s suspension.

5.6. The A and B bottles of the Applicant’s urine Sample #1579622 were transferred, along with all of the other USADA samples held at the Rio Laboratory, to the WADA accredited laboratory in Salt Lake City, Utah (the “Utah Laboratory”). The samples were held there for storage and future analysis.

5.7. At the request of USADA on 26 July 2016 the Utah Laboratory was asked to schedule a B confirmation procedure on urine Sample #1579622. This was requested to determine if the Utah Laboratory could confirm the Rio Laboratory's findings.

5.8. In order to address the concerns that had been raised by the Applicant’s attorney regarding the validity of the findings of the Rio Laboratory, USADA proposed on 28 July 2016 to perform a second analysis of the B bottle for urine Sample #1579622. The analysis was scheduled to take place on 8 August 2016.

5.9. In correspondence dated 29 July 2016 the Applicant's attorney objected to the foregoing procedure because the Sample had been “invalidated” due to the alleged breaches of the chain of custody.

5.10. Following that correspondence the parties engaged in discussions about the contention that the Sample integrity was compromised. Those discussions resulted in an understanding that the Applicant would withdraw the objection to USADA’s proposed second B Sample analysis. The basis for the withdrawal of the objection was that the B Sample analysis proceeds “*just in order to certify that Rio Laboratory contaminated the sample*”.

5.11. On 14 September 2016 USADA informed the Applicant's attorney that the Utah Laboratory determined that the analysis of the Applicant's B Sample confirmed the finding of the Rio Laboratory.

5.12. On 15 September 2016 the parties participated in a status conference call at the direction of the Chief Arbitrator. The outcome of that call was a proposed "special procedure" in which the chain of custody would be bifurcated from the rest of the case and decided as a preliminary matter by the Chief Arbitrator. The proposal was not accepted and the Chief Arbitrator instructed the parties to confer to determine the procedure to govern a full evidentiary hearing.

5.13. The parties agreed on the following briefing schedule: Applicant's Initial Brief and exhibits filed by 19 October 2016; USADA Answering Brief and exhibits by 9 November 2016; and, Applicant's Reply Brief filed by 16 November 2016.

5.14. Based on correspondence from USADA on 5 January 2017, and from counsel for the Applicant on 23 December 2016, the parties agreed that this matter ought to be dealt with by the Chief Arbitrator based upon the papers filed to those dates.

6. PARTIES' SUBMISSIONS

(i) Applicant's Submissions

6.1. It is submitted that the container packaging used to transport the Applicant's Sample was unsealed between the providing of the Sample at 11:17 a.m. and its arrival at the Rio Laboratory 3 hours and 6 minutes later at 2:23 p.m.

6.2. At the Rio Laboratory three different members of the staff handled the container over a 12 minute period until it was placed in cold storage at 3:03 p.m.

6.3. It is submitted on the foregoing facts that the chain of custody of the Sample was broken and the matter ought to be dismissed. Reference was made to the Court of Arbitration for Sport ("CAS") case of the Jamaican sprinter Campbell-Brown² stating that a failure to follow the International Standard for Testing ("IST") is not a technicality but a fundamental point in the anti-doping procedure.

² CAS 2014/A/3487 Veronica Campbell-Brown v. The Jamaica Athletics Administrative Association (JAAA) & The International Association of Athletics Federations (IAAF).

6.4. It is further submitted that the repeated errors and false positives resulted in the Rio Laboratory losing its accreditation by WADA. Loss of accreditation happened in 2013 resulting in the laboratory being suspended for more than one year. In 2016, just prior to the Rio Olympic Games, the accreditation was again lost. The swimmer Etienne Medeiros was subject to an Out-of-Competition test carried out by the LBCD which was cleared so as to not impair her preparation for the Olympics. It is further submitted a similar determination ought to be made in this case.

(ii) Respondent's Submissions

6.5. The analysis of the Applicant's A Sample took place between January and March of 2016. It was reported as Adverse by the Rio Laboratory on 3 March 2016. Throughout that time frame the Rio Laboratory was recognized as a WADA accredited laboratory. It is submitted that under the UFC ADP the Rio Laboratory is presumed to have conducted sample analysis and custodial procedures in accordance with the WADA "International Standard for Laboratories" (the "ISL") as provided for in UFC ADP 3.2.2. Therefore, the Rio Laboratory is presumed to have managed both the custodial procedures and the analysis of the Applicant's Sample appropriately.

6.6. The presumption in favour of the Rio Laboratory may be rebutted by the Applicant showing that: "*a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding*". See UFC ADP 3.2.2. It is submitted that the Applicant has not met its burden because he is unable to credibly identify any departures from the applicable standards or convincingly articulate how any such alleged departures could have reasonably caused his positive case.

6.7. It is submitted in respect of the chain of custody that the lack of a seal in the container transport package does not mean the Samples were not secured. The outer container in which the Sample bottles are shipped does not require that the container have a seal. Even if the policy did require this the absence does not affect the integrity of the Sample bottles within.

6.8. It is further submitted that the suspension of the Rio Laboratory accreditation

was not connected to the Applicant's Adverse Analytical Finding ("AAF"). The Applicant alleges that the suspension was the result of reporting false positives. It is submitted that the WADA ISL provides that a false positive is grounds for revocation of accreditation rather than a mere suspension. See WADA ISL 4.4.13.2.2. In any event the analysis was carried out months before the suspension. At the time of the analysis of the Applicant's Sample the Rio Laboratory was a WADA accredited laboratory.

6.9. It is submitted that the burden of establishing an ADPV has been met. The applicable default sanction for such an offense is a two (2) year period of Ineligibility. There are no mitigating circumstances justifying the reduction of the proposed sanction.

7. UFC ADP

7.1. UFC ADP rules provide, so far as material, as follows: "The following constitute Anti-Doping Policy Violations:

2.1 Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*.

2.1.1 It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. Athletes are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their *Samples*. 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 Policy Violation under Article 2.1.

2.1.2 Sufficient proof of an Anti-Doping Policy Violation under Article 2.1 is established by any of the following: presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in the *Athlete's A Sample* where the *Athlete* waives analysis of the *B Sample* and the *B Sample* is not analyzed; or, where the *Athlete's B Sample* is analyzed and the analysis of the *Athlete's B Sample* confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the *Athlete's A Sample*; or in the

conditions described in the *WADA International Standard for Laboratories* where the *Athlete's B Sample* is split into two bottles and the analysis of the second bottle confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the first bottle.

2.1.3 Excepting those substances for which a quantitative threshold is specifically identified in the *Prohibited List*, the presence of any quantity of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample* shall constitute an Anti-Doping Policy Violation.

2.1.4 As an exception to the general rule of Article 2.1, the *Prohibited List* or *International Standards* may establish special criteria for the evaluation of *Prohibited Substances* that can also be produced endogenously.

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 Policy Violation for *Use* of a *Prohibited Substance* or a *Prohibited Method*.

2.2.2 The success or failure of the *Use* or *Attempted Use* of a *Prohibited Substance* or *Prohibited Method* is not material. It is sufficient that the *Prohibited Substance* or *Prohibited Method* was *Used* or *Attempted* to be *Used* for an Anti-Doping Policy Violation to be committed.

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ARTICLE 3 PROOF OF DOPING

3.1 Burdens and Standards of Proof

USADA shall have the burden of establishing that an Anti-Doping

Policy Violation has occurred. The standard of proof shall be whether *USADA* has established an Anti-Doping Policy Violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where this Anti-Doping Policy places the burden of proof upon the *Athlete* or other *Person* alleged to have committed an Anti-Doping Policy Violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

3.2 Methods of Establishing Facts and Presumptions

Facts related to Anti-Doping Policy Violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

3.2.1 Analytical methods or decision limits approved by *WADA* after consultation within the relevant scientific community and which have been the subject of peer review are presumed to be scientifically valid.

3.2.2 *WADA*-accredited laboratories, and other laboratories approved by *WADA*, are presumed to have conducted *Sample* analysis and custodial procedures in accordance with the *International Standard* for Laboratories. The *Athlete* or other *Person* may rebut this presumption by establishing that a departure from the *International Standard* for Laboratories occurred which could reasonably have caused the *Adverse Analytical Finding*. If the *Athlete* or other *Person* rebuts the preceding presumption by showing that a departure from the *International Standard* for Laboratories occurred which could reasonably have caused the *Adverse Analytical Finding*, then *USADA* shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding*.

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10.2 *Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method*

The period of *Ineligibility* for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 or potential increase in the period of *Ineligibility* under Article 10.2.3:

10.2.1 The period of *Ineligibility* shall be two years where the Anti-Doping Policy Violation involves a non-*Specified Substance* or *Prohibited Method*.

10.2.2 The period of *Ineligibility* shall be one year where the Anti-Doping Policy Violation involves a *Specified Substance*.

10.2.3 The period of *Ineligibility* may be increased up to an additional two years where *Aggravating Circumstances* are present.

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 or Negligence*, then the otherwise applicable period of *Ineligibility* shall be eliminated.

10.11.3 Credit for *Provisional Suspension* or Period of *Ineligibility* Served

10.11.3.1 If a *Provisional Suspension* is imposed on, or voluntarily accepted by, an *Athlete* or other *Person* and that *Provisional Suspension* is respected, then the *Athlete* or other *Person* shall receive a credit for such period of *Provisional Suspension* against any period of *Ineligibility* which may ultimately be imposed.

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7.2. Applicable portions of the WADA International Standard for Testing and Investigations (“ISTI”) include:

9.0 Transport of *Samples* and documentation

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9.2 General

9.2.1 Transport starts when the *Samples* and related documentation leave the Doping Control Station and ends with the confirmed receipt of the *Samples* and Sample Collection Session documentation at their intended destinations.

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9.3 Requirements for transport and storage of *Samples* and documentation

9.3.1 The Sample Collection Authority shall authorize a transport system that ensures *Samples* and documentation are transported in a manner that protects their integrity, identity and security.

9.3.2 Samples shall always be transported to the laboratory that will be analyzing the *Samples* using the Sample Collection Authority's authorised transport method, as soon as practicable after the completion of the Sample Collection Session. *Samples* shall be transported in a manner which minimizes the potential for *Sample* degradation due to factors such as time delays and extreme temperature variations.

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8. FINDINGS

8.1. The negative testing result from the In-Competition Sample on 30 January 2016 does not have any implications for the Out-of-Competition Sample collected on 11 January 2016. They are two separate samples with analytical tests conducted at different times on different samples. A Sample only reflects what is within the bodily fluids at the time of its being given. Therefore, it is possible to test negative on one occasion where a short time before there was a positive result. There can be many explanations as to why that can be the case. The most common would be that the Prohibited Substance if present at the time of taking one sample could have cleared the body system by the time of the taking of a subsequent sample. The subsequent negative result carries no implications with respect to the prior positive analytical result. The analysis relates to a single moment in time when the Sample was taken and the contents analyzed. The fact that one is positive and the other is negative is not proof that the positive result is linked with the Rio Laboratory suspension of accreditation.

8.2. USADA met its burden of proof as set out in UFC ADP 3.1 when it provided the evidence of the positive analytical result arising from the analysis conducted by the Rio Laboratory. The presence of a Prohibited Substance in the Applicant's A Sample constitutes a violation of the UFC ADP in Article 2.1.2 where the B Sample confirms the presence of the Prohibited Substance. This has occurred in the present case through the actions of the WADA accredited Rio Laboratory and the Utah Laboratory. The presence of a Prohibited Substance in the Applicant's A and B Samples is sufficient proof and constitutes an ADPV.

8.3. The burden then shifts from USADA, having established the ADPV by virtue of the introduction of the laboratory results in this arbitration proceeding. It then becomes a burden on the athlete to establish specific facts or circumstances that they allege ought to nullify the laboratory result or justify the dismissal of the case. The standard of proof imposed on the Applicant by the UFC ADP being the balance of probabilities. Thus, the Applicant has the burden to establish the defenses alleged in order to prove that the evidence of the ADPV analytical finding ought not to be accepted.

8.4. The first defense of the Applicant is related to the Doping Control forms and sample reception display of incorrect dates. It is regrettable that the various forms have not been completed with precise accuracy. However, the thrust of all of the evidence suggests that the applicable dates are known and no confusion has arisen as a result of incorrect entry of dates on the processing paperwork. There is no doubt that the background facts in Section 4 of this decision can be set out because the evidence when examined as a complete totality suggest the chronology of events as set out in this Award. Furthermore, with respect to the Doping Control Form itself, the Applicant and the DCO both signed off and acknowledged that the sample collection process was carried out in accordance with the relevant procedures thereby nullifying the impact of any incorrect dates on the form. It is unfortunate and sloppy administrative practice to have these incorrect dates on the forms but they are of no consequence in terms of a defense to the analytical findings based on all of the evidence of this case.

8.5. The next defense raised by the Applicant in response to the analytical result provided in evidence by USADA relates to the security of the shipment of the Sample to the Rio Laboratory and the chain of custody. Dr. Francisco Radler, Director of the Rio Laboratory, states in his declaration that the Sample was transported in a Styrofoam package. The WADA ISTI provides in Section 9.3 the requirements for transport and storage of Samples.

8.6. All that the ISTI require is that the Samples be transported in a “manner that protects their integrity, identity and security”. Therefore, it is unnecessary that the external transport container has a secure seal which it did not have in this case. It is important to recognize, as the declaration of Dr. Radler states, the Sample bottles themselves were sealed. Therefore, based on the ISTI it is not required that the transport container be sealed. As Dr. Radler states, some clients may request that the LBCD does transport their Samples in a sealed container. That was not a requirement in this case. Therefore, this aspect of the chain of custody defense of the Applicant has not been established as a matter of the application of the applicable International Standards at law.

8.7. The other chain of custody claims of the Applicant are dependent upon the assumption that the bottles containing Sample #1579622 were unsealed and thus

personnel at the Rio Laboratory could be responsible for contaminating them. The bottles were not unsealed as can be concluded from Dr. Radler's declaration. Thus, the premise of the argument is without foundation to establish a breach of the chain of custody. The facts here are not the same as in the Jamaican athlete's case, *supra*. In that case the procedures for the collection of a partial sample were not followed at all. The failures included leaving the partial sample vessel unsealed in contradiction to the applicable IST at that time. In the case at hand, there is no partial sample collection and the A&B bottles containing the Applicant's Sample were sealed. It was the transport carrier of the samples which was unsealed. This latter point is not a requirement to of the current ISTI provisions. Therefore, the principle of the case of nullifying the analytical result because of violations of the then IST are not applicable in this matter.

8.8. The Applicant submits that the fact that the accreditation of the Rio Laboratory was suspended in June of 2016 means that the laboratory had not carried out the proper analysis on the Sample. The Sample was analyzed and reported by the Rio Laboratory in March of 2016. At that time the Rio Laboratory was an accredited laboratory of WADA. A suspension some three months later of the laboratory's accreditation does not mean that the sample analysis in March was incorrect or flawed. Indeed, the second confirmation of the B sample by the Utah Laboratory indicates that the Rio Laboratory's analysis was not flawed.

8.9. Dr. Radler in his declaration states that the suspension of the accreditation in June of 2016 was different and unrelated to the loss of accreditation several years earlier. The June 2016 suspension of the Rio Laboratory's accreditation was a preventive measure in order to verify that a new instrument purchased for use in the upcoming Rio 2016 Olympic Games was in compliance with WADA standards. Dr. Radler advises that the instrument used to analyze Sample #1579622 was a different brand of instrument than the one purchased for the Olympics. Therefore, I conclude that the temporary suspension was in no way connected to the earlier conduct of the Rio Laboratory at the time of the analysis of the Applicant's Sample.

8.10. Finally, in response to the allegations of the Applicant regarding the analysis of the Rio Laboratory there is the provision in the UFC ADP in 3.2.2 that extends a presumption to the work of the laboratory. That provision provides a presumption that the laboratory has conducted Sample analysis and custodial procedures in

accordance with the ISL. The Applicant must rebut that presumption by establishing that a departure from the ISL has occurred which could reasonably have caused the Adverse Finding. The Applicant has produced no evidence that establishes a departure from the ISL. Therefore, the Applicant has not met the threshold condition to rebut the presumption of Article 3.2.2.

8.11. For all of the foregoing reasons, the Rio Laboratory is presumed and is found to have managed the custodial process and the analysis of the Applicant's Sample in accordance with the ISTI and the ISL. An ADPV has been proven in violation of the UFC ADP Article 2.1.2.

9. CONCLUSION

9.1. The Applicant has failed to provide an acceptable explanation of why there was a positive analytical result from the Rio Laboratory. That being the case, the Applicant has committed an ADPV by the presence of a Prohibited Substance in his Sample in violation of Article 2.1.2.

9.2. There being no mitigating circumstances the appropriate sanction in this case is a two (2) year suspension in accordance with 10.2.1 of the UFC ADP. The suspension is to commence with the imposition of the Provisional Suspension on 10 March 2016 as provided for in Article 10.11.3.1. The Suspension will end on 9 March 2018.

DATED AT LONDON, ONTARIO, CANADA THIS 21ST DAY OF JANUARY 2017.



Richard H. McLaren
Chief Arbitrator