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## DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MS ANDRESSA DE MORAIS

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### Introduction

1. In April 2017, World Athletics<sup>1</sup> established the Athletics Integrity Unit ("AIU") whose role is to protect the integrity of the sport of Athletics, including fulfilling World Athletics' obligations as a Signatory to the World Anti-Doping Code. World Athletics has delegated implementation of its Anti-Doping Rules ("ADR") to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. Ms. Andressa De Morais is a 29-year old Brazilian discus thrower who is an International-Level Athlete for the purposes of the ADR (the "**Athlete**").
3. This decision is issued pursuant to Article 8.4.7 ADR which provides that:

8.4.7 *"[i]n the event that [...] the Athlete or Athlete Support Person admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by the Integrity Unit, a hearing before the Disciplinary Tribunal shall not be required. In such a case, the Integrity Unit...shall promptly issue a decision confirming...the commission of the Anti-Doping Rule Violation(s) and the imposition of the Specified Consequences (including, if applicable, a justification for why the maximum potential sanction was not imposed)".*

### The Athlete's commission of an Anti-Doping Rule Violation

4. On 6 August 2019, the Athlete provided a urine Sample In-Competition at the 'XVIII Pan American Games' in Lima, Peru (the "**Games**"), which was given code 6380337 (the "**Sample**").
5. On 11 August 2019, the World Anti-Doping Agency ("**WADA**") accredited laboratory in Montreal, Canada (the "**Laboratory**"), reported an Adverse Analytical Finding (the "**AAF**") for the presence of a SARM<sup>2</sup> S-22<sup>3</sup> ("**S-22**") in the Sample.
6. S-22 is a Prohibited Substance under the WADA 2019 Prohibited List under the category S1.2: *Other Anabolic Agents*. It is a non-specified substance prohibited at all times.
7. The Athlete did not have a Therapeutic Use Exemption ("**TUE**") permitting the use of S-22.
8. On 26 August 2019, the Athlete was notified by the Pan American Sports Organization ("**PASO**") of the AAF and was charged under Article 2.1 of the PASO Anti-Doping Rules ("**PSADR**"): *Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*. The AIU was also copied on the notification by PASO.

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<sup>1</sup> Formerly the International Association of Athletics Federations ("**IAAF**")

<sup>2</sup> Selective androgen receptor modulator

<sup>3</sup> Also known as Enobosarm, Ostarine, MK-2866 or GTx-024

9. On 4 September 2019, the AIU wrote to the Athlete notifying her of the AAF with respect to potential Consequences beyond the Games and provisionally suspended the Athlete pending resolution of her case.
10. On 11 October 2019, the PASO Ad Hoc Disciplinary Committee concluded that the Athlete was guilty of a doping offence under the PSADR and that she would accordingly be disqualified from the Games. That decision was not appealed by the Athlete and therefore became final and binding.
11. On 13 October 2019, PASO referred the case to World Athletics for further action to be taken under the ADR, specifically, in relation to the Consequences to be imposed on the Athlete beyond disqualification from the Games in accordance with Article 7.2.8(c) ADR.
12. On 28 November 2019, the AIU wrote to the Athlete and requested her explanation for the presence of S-22 in her Sample.
13. On 5 December 2019, and in subsequent exchanges, including an interview conducted on 11 May 2020, the Athlete provided her explanation to the AIU, which is summarized below.
14. In July 2019, the Athlete ran out of nutritional supplements whilst travelling in Europe and so contacted her doctor in Brazil who renewed her prescription for the following supplements:
  - Vitamin D 10,000 ul + vitamin A ul 1000 (1x daily 1 capsule)
  - Rhodiola rosea 75mg + 5HTP 75mg Mucuna 100mg Relora 25mg (2 capsules per day)
  - Creatine 5 grams (1 x daily)
  - Caffeine 200mg + Aurantium 700mg (2 capsules per day)
  - 750mg HMB + Alanine Beta 3grams + L arginine 700mg + Caffeine 200mg + Creatine 3 grams (before training)
  - L leucine 4 grams + L Isoleucine 500mg + L valine 500mg + L Taurine 500mg + L Ornithine 500mg (after training)
15. The Athlete's mother picked up the prescription from the doctor on the Athlete's behalf and took it to a compound pharmacy, the Farmácia Central, in Bragança Paulista ("the **Compound Pharmacy**") so that the prescribed products could be produced.
16. Upon the Athlete's return to Brazil, she retrieved the products from the Compound Pharmacy in person on 31 July 2019 and began using them on 1 August 2019 until 6 August 2019, immediately prior to the urine sample collection at the Games on that day. On the day of the test, the Athlete stated that she consumed all the supplements listed above, except for the after-training supplement.
17. All of the above-referenced products were sent to the Laboratory for analysis and were found to contain S-22 at different concentrations. Furthermore, the Athlete also provided evidence from a representative of the Compound Pharmacy which confirmed that S-22 had been used in the production of other products in the Compound Pharmacy on the same day that the Athlete's products were produced.
18. The Athlete therefore asserts that the products that she took between 1 August 2019 and 6 August 2019 must have been contaminated by the Compound Pharmacy and were the source of the AAF.
19. The Athlete admitted the Anti-Doping Rule Violation (i.e., the presence of S-22 in her sample) but asserted that she had No Fault or Negligence or at least No Significant Fault or Negligence for the Anti-Doping Rule Violation and requested that a reprimand and no period of ineligibility be imposed upon her.

## Consequences

20. This is the Athlete's first Anti-Doping Rule Violation.
21. S-22 is a Prohibited Substance under the WADA 2019 Prohibited List in the category S1.2: Other Anabolic Agents. It is a non-specified substance for the purposes of the ADR.
22. Article 10.2.1 ADR provides that the period of Ineligibility to be imposed for the presence of a prohibited substance in an Athlete's sample shall be determined as follows:

**“10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method  
[...]**

*10.2.1 The period of ineligibility shall be four years where:*

- (a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person establishes that the Anti-Doping Rule Violation was not intentional.*
- (b) The Anti-Doping Rule Violation involves a Specified Substance and the Integrity Unit establishes that the Anti-Doping Rule Violation was intentional.*

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

*10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term therefore requires that the Athlete or other Person engaged in conduct that he knew constituted an Anti-Doping Rule Violation or knew that there was significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition (a) shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that it was Used Out- [www.athleticsintegrity.org](http://www.athleticsintegrity.org) 3 of Competition; and (b) shall not be considered "intentional" if the Substance is not a Specified Substance and the Athlete can establish that it was Used Out-of-Competition in a context unrelated to sport performance.*

23. As such, the starting period of Ineligibility is four years pursuant to Article 10.2.1(a) ADR, unless the Athlete can establish that the anti-doping rule violation (“**ADRV**”) was not intentional.
24. Having reviewed the Athlete's explanation and taken independent steps to verify it (including verifying the Compound Pharmacy's use of S-22 on the day in question), the AIU accepts that the Athlete has established (on the balance of probabilities) how S-22 entered her system and that the circumstances of the AAF are such that the ADRV shall not be considered intentional. Consequently, under Article 10.2 ADR, the starting point for the applicable period of Ineligibility is two (2) years, subject to reduction for No Fault or Negligence or No Significant Fault or Negligence.

## Mitigation of Sanction

25. To sustain a plea of No Fault or Negligence (Article 10.4 ADR), the Athlete must show that she did not depart from the duty imposed on her under the ADR to use 'utmost caution' to ensure that no

prohibited substance entered her body. Alternatively, to sustain a plea of No Significant Fault or Negligence (Article 10.5 ADR), she must show that her departure from the strict standard of care was not significant (objective analysis) and/or that there are legitimate reasons why she failed to take all the steps required (subjective analysis) such that her overall fault should not be regarded as significant.

26. A finding of No Fault or Negligence eliminates the period of Ineligibility completely (Article 10.4 ADR) and a finding of No Significant Fault or Negligence triggers a discretion under Article 10.5.1(a) to impose a sanction between a reprimand and a two-year period of ineligibility, depending on the degree of Fault of the Athlete. The decision of the Court of Arbitration for Sport (“CAS”) in CAS 2013/A/3327 **Marin Cilic v. ITF**<sup>4</sup> provides helpful guidance on where an athlete's fault lies within that range. An athlete's 'objective fault' is first assessed to determine into which category their fault falls – 'light' (0-8 months); 'normal' (8-16 months); or 'considerable' (16-24 months) – and then their 'subjective' fault is assessed to move them up or down within that category (or into a different category).
27. In assessing the 'objective' fault, the CAS Panel in **Cilic** stated<sup>5</sup> that, in ordinary circumstances (including when using in-competition a product that is banned in-competition), Athletes should (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label against the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure that the product is reliably sourced, and (v) consult appropriate experts in such matters and instruct them diligently before consuming the product.

#### Degree of Fault – Objective Assessment

28. As recognized by CAS jurisprudence *“[i]t has been a known and widely publicised fact for several years that food supplements can be – and sometimes intentionally are –contaminated with products which are prohibited in sports. An athlete who ignores this fact, does so at his/her own risk [...] The athlete's negligence lies in the fact that he/she uses food supplements which include a generally known risk of contamination. The extent of the precaution taken to reduce the risk of contamination may have a bearing on the extent of the sanctions”*<sup>6</sup>.
29. Added to this general caution that must be exercised in relation to the use of food supplements, there have also been numerous cases in Brazil concerning AAFs resulting from the use of supplements/products produced by compound pharmacies that were contaminated with prohibited substances. In 2011, four Brazilian swimmers, including César Cielo had caffeine pills prescribed to them but which were contaminated with furosemide during the production process in a reputable compound pharmacy<sup>7</sup>. Tennis players Marcelo Demoliner (2016), Thomaz Bellucci (2017)<sup>8</sup>, Igor Ribeiro Marcondes (2018)<sup>9</sup> and Franco Gabriel Agamenone (2019)<sup>10</sup> all returned AAFs for diuretics as a result of the contamination of supplements that were produced in compound pharmacies. In 2019, tennis players Camilla Emilia Maffei Bossi<sup>11</sup> and Beatriz Haddad Maia<sup>12</sup> both tested positive for SARM S-22 as a result of taking supplements that were contaminated by compound pharmacies and a further tennis player, Robert Jarry<sup>13</sup>, tested positive for Ligandrol for the same reason. In

<sup>4</sup> See CAS 2013/A/3327 **Marin Cilic v. ITF** and CAS 2013/A/3335 **ITF v. Marin Cilic**.

<sup>5</sup> See § 74-75 of the CAS award.

<sup>6</sup> See CAS 2002/A/385 T. / International Gymnastics Federation (FIG), §50

<sup>7</sup> See CAS 2011/A/2495 FINA v. César Augusto Cielo Filho & CBDA CAS 2011/A/2496 FINA v. Nicholas Araujo Dias dos Santos & CBDA CAS 2011/A/2497 FINA v. Henrique Ribeiro Marques Barbosa & CBDA CAS 2011/A/2498 FINA v. Vinicius Rocha Barbosa Waked & CBDA

<sup>8</sup> <https://www.doping.nl/media/kb/5150/ITF%202017%20ITF%20vs%20Thomaz%20Bellucci%20%28S%29.pdf>

<sup>9</sup> <https://www.doping.nl/media/kb/5629/ITF%202018%20ITF%20vs%20Igor%20Ribeiro%20Marcondes%20%28S%29.pdf>

<sup>10</sup> <https://www.doping.nl/media/kb/6253/ITF%202019%20ITF%20vs%20Franco%20Gabriel%20Agamenone%20%28S%29.pdf>

<sup>11</sup> <https://www.doping.nl/media/kb/6209/ITF%202019%20ITF%20vs%20Camilla%20Emilia%20Maffei%20Bossi%20%28S%29.pdf>

<sup>12</sup> <https://antidoping.itftennis.com/media/315866/315866.pdf>

<sup>13</sup> <https://antidoping.itftennis.com/media/317225/317225.pdf>

Athletics specifically, Ana Claudia Silva Lemos (2016) and Caio Bonfim (2017) returned AAFs that were attributed to supplements contaminated by compound pharmacies.

30. Many of the above cases were reported widely in the national and international media in Brazil. Furthermore, Brazilian track and field athletes in the National team have been specifically warned against using compound pharmacies due to the heightened risk of contamination during production.
31. In view of the proliferation of doping cases involving compound pharmacies in Brazil, the AIU concludes that the Athlete is objectively considered to have known and been on specific notice of the significant risk that supplements/products prepared by compound pharmacies in Brazil may contain prohibited substances not listed as ingredients. The AIU also considers that a product obtained from a compound pharmacy does not constitute a product that is 'reliably sourced'.
32. On this basis, the Athlete cannot establish that she bears No Fault or Negligence and the AIU concludes that that her objective level of fault must be significant, i.e., in the 'considerable' category by reference to the *Cilic* scale.

### Degree of Fault – Subjective Assessment

33. The Athlete is an experienced International-Level Athlete.<sup>14</sup> It is therefore highly surprising that she disregarded the clear and obvious risk associated with using supplements/products produced by compound pharmacies in Brazil.
34. It is noted, on the other hand, that the products in question were prescribed to the Athlete by a doctor and that she had used the Compound Pharmacy previously without issue. According to the Athlete, before going to the Compound Pharmacy, she made her doctor call ahead to discuss product purity and she also researched the Compound Pharmacy on the internet, and found that it was ISO-accredited and had never previously been involved in any contamination case.
35. Taking these factors into consideration, the AIU has determined that the Athlete's subjective level of Fault is within the lower region of the significant/considerable degree of Fault range of 16-24 months and considers that a 16-month period of Ineligibility should be imposed in the Athlete's case. The Athlete has accepted this sanction.
36. Given the Athlete's timely admission of the violation after being confronted by the AIU, there is discretion under Article 10.10.2(b) ADR to back-date the commencement of the period of ineligibility to the date of sample collection. The AIU agrees to exercise its discretion in the Athlete's case such that the period of Ineligibility should run for 16 months from the date of sample collection on 6 August 2019, i.e., until 5 December 2020.
37. The Athlete's results from 6 August 2019 are disqualified pursuant to Article 10.8 ADR, with all resulting consequences, including forfeiture of any titles, medals, points and prize and appearance money.

### Decision

38. This constitutes the Athlete's first Anti-Doping Rule Violation under the ADR.
39. On the basis that the Athlete has admitted the Anti-Doping Rule Violations under Article 2.1 ADR, the AIU confirms by this decision the following consequences for a first Anti-Doping Rule Violation:

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<sup>14</sup> The Athlete is a successful international-level athlete having competed worldwide and in some of the highest profile competitions in the World Athletics Calendar including the Diamond League and the World Championships. She is ranked 8th in the world in Discus Throw (see <https://www.worldathletics.org/athletes/brazil/andressa-de-morais-14327283>)

- 39.1. a period of Ineligibility of 16 months commencing on 6 August 2019 pursuant to Article 10.2.2, 10.5.2 and 10.10.2(b) ADR; and
  - 39.2. disqualification of the Athlete's results since 6 August 2019 with all resulting consequences, including forfeiture of any titles, medals, points and prize and appearance money pursuant to 10.8 ADR.
40. The Athlete has accepted the above consequences for her Anti-Doping Rule Violation and has expressly waived her right to have those consequences determined by the Disciplinary Tribunal at a hearing.

#### **Publication**

41. In accordance with Article 8.4.7(b) ADR, the AIU shall publicly report this decision on the AIU's website<sup>15</sup>.

#### **Rights of Appeal**

42. This decision constitutes the final decision of the AIU pursuant to Article 8.4.7 ADR.
43. Further to Article 13.2.4 ADR, WADA and the Autoridade Brasileira de Controle de Dopagem ("ABCD") have a right of appeal against this decision to the Court of Arbitration for Sport in Lausanne, Switzerland, in accordance with the procedure set out at Article 13.7.2 ADR.
44. If an appeal is filed against this decision by WADA or ABCD, the Athlete will be entitled to exercise her right of cross-appeal in accordance with Article 13.9.3 ADR.

**Monaco, 4 December 2020**

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<sup>15</sup> <https://www.athleticsintegrity.org/disciplinary-process/first-instance-decisions>