

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL TRIBUNAL

IN THE MATTER OF THE ARBITRATION)
BETWEEN)

UNITED STATES ANTI-DOPING AGENCY,)

Claimant,)

-vs-)

ROBERT SCAVILLA,)

Respondent.)

AAA Case No.: 01-22-0004-9359

HAYDEE ROSARIO, ESQ.
ARBITRATOR

Final Award

APPEARANCES

FOR CLAIMANT

Jeff T. Cook, Esq.
Spencer Crowell, Esq.

FOR RESPONDENT

Law Offices of Power & Cronin, Ltd.
By Jared P. Vasiliauskas, Esq.

Robert Scavilla, Respondent

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I. INTRODUCTION

Pursuant to the American Arbitration Association (“AAA”) Commercial Arbitration Rules (“AAA Rules”), as modified by the Procedures for the Arbitration of Olympic and Paralympic Sport Doping Disputes (“Arbitration Procedures”) contained in the United States Olympic and Paralympic Committee National Anti-Doping Policy (“USOPC NADP”); United States Anti-Doping Agency (“USADA”) Protocol for Olympic and Paralympic Movement Testing (“the Protocol”); the World Anti-Doping Code (“the Code”); and the International Weightlifting Federation (“IWF”) Anti-Doping Rules (collectively known as the “Applicable Rules”), an evidentiary hearing was held via video conference on February 22, 2022, before the duly appointed Arbitrator, Haydeé Rosario, Esq. (“the Arbitrator”), concerning the anti-doping rule violation (“ADRV”) charges filed by Claimant USADA against Respondent Robert Scavilla (“Respondent”) by letter dated November 9, 2022.

I, THE UNDERSIGNED ARBITRATOR, having been duly appointed and having duly heard the allegations, arguments, submissions, proofs, and evidence submitted by the Parties do hereby **FIND** and **AWARD** as follows,

II. THE PARTIES

1. USADA is an independent, nonprofit organization recognized by the United States Congress as the official anti-doping organization for all Olympic, Paralympic, Pan American, and Parapan American sport in the United States. USADA has full authority to execute a comprehensive national anti-doping program, including policies and procedures related to testing of athletes. USADA is also responsible for conducting the drug tests, investigating ADRVs, managing the results, and adjudicating ADRV disputes.
2. Respondent is a sixty-two-year-old Master Level Weightlifter. On June 19, 2016, Respondent joined USA Weightlifting (“USAW”), the national governing body for the sport of weightlifting.¹ Since then, Respondent has competed in national and international masters weightlifting competitions, including the 2016 American Weightlifting Championships, the 2018 National Masters Weightlifting Championships, and the 2022 Pan American Masters Weightlifting Championship in San Juan, Puerto Rico, where the in-competition sample that resulted in the Adverse Analytical Finding (“AAF”) in this case was collected from Respondent.²

¹ C3, Scavilla USA Weightlifting Membership History.

² C2, Scavilla Competition History.

3. USADA was represented in this proceeding by Jeff T. Cook, Esq., the General Counsel for USADA, and by Spencer Crowell, USADA Olympic and Paralympic Counsel.
4. RESPONDENT was represented by Jared P. Vasiliauskas, Esq., Law Offices of Power & Cronin, Ltd.
5. USADA and RESPONDENT will be referred to collectively as the “Parties.”

III. UNCONTESTED FACTS

6. The Parties did not enter into a Stipulation of Uncontested Facts in this case. The parties, however, did not contest the following:
7. The Puerto Rican Anti-Doping Organization collected an in-competition sample from Respondent at the Pan American Weightlifting Championship in San Juan, Puerto Rico on June 10, 2022³. The sample was sent to a World Anti-Doping Agency (“WADA”), accredited laboratory in Laval, Quebec, Canada (the “Laboratory”), for analysis. The collection and processing of the A and B bottles of Sample # 1055571 was conducted appropriately and without error.⁴
8. The Laboratory reported an AAF for the collected urine in Sample A and B for the presence DHCMT M3 a long-term metabolite of dehydrochloromethyltestosterone (“DHCMT”), which was detected at approximately 10pg/ml in the collected urine. Respondent does contest that reference to DHCMT M4 long-term metabolite in the laboratory documentation packages provided by the Montreal laboratory is the same as DHCMT M3 long-term metabolite.⁵
9. Respondent does not contest that by letter dated September 7, 2022, USADA notified him it imposed a provisional suspension because the Laboratory reported his A Sample # 1055571 contained DHCMT M3, which is a Prohibited Substance in the class of Anabolic Agents on the WADA Prohibited List.

IV. THE ISSUES

10. The issues before the Arbitrator in this case are the following:
 - (a). Whether USADA proved Respondent was a member of the USAW, and as such, subject to the Code, when he ingested the DHCMT M3? If proven,

³ C7, Doping Control Form.

⁴ R13, Scott Report at 6.

⁵ R13, Id. at 6.

(b). Whether Respondent established by the balance of probability that he did not intentionally violate the anti-doping rules at issue in this case?

11. USADA asked for the Arbitrator for the following:⁶

(a). A four- year period of ineligibility of ineligibility beginning September 7, 2022, the date Respondent was provisionally suspended,

(b). For the disqualification of any results obtained by Respondent on or after June 10, 2022, through the commencement of his provisional suspension on September 7, 2022, in accordance with Article 10.10 of the Code.

V. JURISDICTION

12. Respondent agreed this arbitration is governed, procedurally and substantively, by the USADA Protocol as well as the above-mentioned “Applicable Rules”, as applicable to Respondent and to Sample # 1055571 collected on June 10, 2022.

13. No party has objected to the jurisdiction of the Arbitrator or asserted an arbitrability issue related to the charges against Respondent.

14. Accordingly, the Arbitrator finds the issues presented in this case are properly before the undersigned Arbitrator.

VI. BURDEN AND STANDARD OF PROOF

15. Article 3.1 of the USADA Protocol provides:

The *Anti-Doping Organization* shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the *Anti-Doping Organization* has established an anti-doping rule 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 the Code places the burden of proof upon the Athlete or other *Person* alleged to have committed an anti-doping rule violation to rebut a presumption or establish specific facts or circumstances, except as provided in Articles 3.2 and 3.2.3, the standard of proof shall be by a balance of probability. [Emphasis in the original]

[Comment to Article 3.1: This standard of proof required to be met by the *Anti-Doping Organization* is comparable to the standard which is applied in most countries to cases involving professional misconduct.

⁶ USADA Pre-Hearing Brief at 21-24.

16. Once an ADRV has been established, the burden shifts to Respondent to demonstrate by the balance of probability the reduction of the default sanction is appropriate because the use was the prohibited substance was not intentional. Article 10.2.1 provides, in relevant parts, that:

[t]he period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where: The anti-doping rule violation does not involve a *Specified Substance* or a *Specified Method*, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.⁷

VII. PROCEDURAL HISTORY

17. On June 10, 2022, the Puerto Rican Anti-Doping Organization collected the in-competition Sample # 10555701 from Respondent during the Pan American Weightlifting Championship held in San Juan, Puerto Rico. The WADA-accredited laboratory (the “Montreal Laboratory”), in Laval, Quebec, Canada, reported an adverse analytical finding (“AAF”) for the presence of DHCMT M3 or M3, a prohibited substance listed on the WADA Prohibited List as Anabolic Agent.

18. On September 7, 2022, USADA notified Respondent of the AAF for DHCMT M3.⁸ In response, Respondent requested for the analysis of his B sample, which confirmed the presence of DHCMT M3.⁹

19. On November 9, 2022, USADA charged Respondent with the ADRVs at issue in this case, i.e., for the use of DHCMT M3 and the presence of DHMCT M3 in his urine samples.¹⁰

20. On November 18, 2022, Respondent by his attorney Jared P. Vasiliauskas, Esq., Power & Cronin, Ltd., requested an arbitration hearing to contest the sanction(s) proposed by USADA, as set forth in USADA’s charging letter dated November 9, 2022, regarding Sample # 1055571 collected from Respondent at the Pan American Masters Weightlifting Championship on June 10, 2022.

21. By letter dated November 21, 2022, sent to AAA, USADA requested a hearing under the Arbitration Procedures.

⁷ C8, WADA Code.

⁸ R4, Notice of AAF of A Sample dated September 7, 2022.

⁹ R5, Notice of AAF of B Sample dated September 27, 2022.

¹⁰ R6, USADA Charge Letter dated November 9, 2022.

22. By letter dated November 30, 2022, AAA appointed the Arbitrator in this case to hear and decide the charges of anti-doping rule violations filed by USADA against Respondent by letter dated September 7, 2022.
23. On December 20, 2023, the Arbitrator held a preliminary hearing with the Parties, wherein the Parties agreed to a discovery schedule and to schedule the hearing in this case.
24. On December 23, 2023, Respondent filed “Respondent’s Request for An Expedited Award” to request an expedited award in this case, or in the alternative, an operative award to determine Respondent’s eligibility on or before March 10, 2023, before the commencement of the 2023 USAW Masters Championships (“Nationals”). On December 28, 2022, USADA filed its opposition to Respondent’s Request for an Expedited Award, wherein it asserted, in relevant parts, that the Nationals do not qualify as a significant competition and noted the competitions mentioned by Respondent in his request do not fall within the forty-five (45) days provided by Section 16(b) of the Protocol. Thus, it maintained, USADA is under no obligation to expedite the proceedings in this case. USADA recognized that pursuant to Rule-6 of the Procedures, the Arbitrator, at the request of any party, may shorten the time period provided in the Protocol where is reasonably necessary and in the interest of justice to resolve the Athlete’s eligibility.
25. On January 3, 2023, the Arbitrator granted Respondent’s request for an expedited award, or in the alternative, an operative award to determine Respondent’s eligibility on or before March 10, 2023.
26. On January 3, 2023, the Arbitrator issued Scheduling Order No. 1, wherein the Arbitrator scheduled the dates for the submission of pre-hearing briefs, exhibits and designated witnesses, and scheduled the hearing for February 22, 2023.
27. On February 22, 2023, the Arbitrator held a full evidentiary hearing via video conference in which both USADA and Respondent were present and represented by Counsel. The Parties were given the opportunity to call witnesses and present evidence, examine and cross-examine witnesses, and make arguments in support of their respective positions.
28. The hearing, as agreed upon by the parties, was not transcribed. The Arbitrator’s confidential notes serve as her record of the hearing for the purposes of writing a reasoned Award.
29. The Arbitrator heard from the following witnesses, all of whom were sworn or affirmed:

For Claimant:

Dr. James Dalton, Ph. D.

Dr. Daniel Eichner, Ph. D.

Dr. Matthew Fedoruk, Ph. D.

For Respondent:

Respondent

Kim Kalishek

Marcy Rose

Micah McBeth

Paul Scott

30. All of the Parties' exhibits were admitted into evidence.
31. The parties provided oral opening and closing statements, gave arguments and were given the opportunity to raise any issues or argument in support of their respective positions.
32. The Parties chose not to submit post-hearing briefs.
33. The evidentiary hearing lasted one day.
34. At the conclusion of the hearing, the Arbitrator asked the Parties whether they had any additional evidence to offer or witnesses to be heard, as required by the Protocol. The Parties indicated that they did not.
35. The Arbitrator declared the hearing closed on February 22, 2023.

VIII. APPLICABLE LAW

36. This arbitration proceeding is governed by the Protocol and applies to Respondent and to in-competition Sample 0155571 collected on June 10, 2022, at the Pan American Masters Weightlifting Championship in San Juan, Puerto Rico.
37. The Code is incorporated into the Protocol.¹¹ The WADA Prohibited List is also applicable. Under the WADA Prohibited List, DHCMT and its metabolite DHCMT M3 are prohibited substances classified as anabolic agents.
38. As a member of the USAW, Respondent has been subject to the Code since June 19, 2016.
39. Articles 2.1 and 2.2 of the Code prohibit the presence and use of prohibited substances. It applies a strict liability standard that holds athletes responsible regardless of fault or knowing use.

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

¹¹ C8, the Code.

2.1.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. 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 rule violation under Article 2.1.

[Comment to Article 2.1.1: An anti-doping violation is committed under this Article without regard to an Athlete's Fault. This rule has been referred to in various CAS decisions as "Strict Liability." An Athlete's Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.]

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

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

[Comment to Article 2.2: It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Athlete Biological Passport, or other analytical information which does not otherwise satisfy all of the requirements to establish "Presence" of a Prohibited Substance under Article 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organization provides a satisfactory explanation for the lack of confirmation in the other Sample.

40. Comment to Article 7.7 of the Code provides, in relevant part, that:

"[c]onduct by an Athlete or other Person before the Athlete or other Person was subject to the authority of any Anti-Doping Organization would not constitute an anti-doping rule violation."¹²

41. If an ADRV is established by USADA, the burden then shifts to the athlete to establish that a reduction of the default sanction is warranted. Article 10.2.1 of the Code provided that:

'[the] period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where: The anti-doping violation does not involve a Specified Substance or a Specified

¹² C8, WADA Code at Article 7.7 n. 51.

Method, unless the Athlete or the Person can establish that the anti-doping rule violation was not intentional.”¹³

42. To establish the use of the prohibited substance was unintentional in a case where the Athlete is unable to establish the source of the positive test, as in Respondent’s case, the Code indicates as follows:

While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one’s system, *it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance.*¹⁴ [emphasis added]

IX. FACTUAL BACKGROUND

The Arbitrator considered the entire record produced, including the Parties’ written and oral submissions as well as the evidence adduced during the instant arbitration proceeding. Notwithstanding the review of the entire record, this Award refers only to the submissions and evidence it considered necessary to explain the Arbitrator’s reasoning.

43. Respondent is a Master Level in the sport of weightlifting. Respondent has been involved in the sports of weightlifting throughout most of his life. On June 19, 2016, he became a member of the USAW. It is undisputed that he became subject to the Code and the Applicable Rules when he became a member of the USAW.
44. As a member of the USAW, Respondent has completed three USADA Anti-Doping Education courses.¹⁵ He completed the 2018 Athlete’s Advantage Tutorial on March 1, 2018, the 2021 Athlete Advantage Tutorial, and most recently the 2022 Advantage Tutorial on April 15, 2022.¹⁶ Respondent admitted he received information as to how athletes are responsible for everything that enters their bodies and the concept of strict liability as it refers to the anti-doping rules at issue.
45. On June 10, 2022, Respondent was selected for an in-competition test during the Pan American Masters Weightlifting Championship in San Juan, Puerto Rico.¹⁷ The samples collected from Respondent by the Puerto Rican Anti-Doping Organization were processed the WADA-accredited laboratory (“Laboratory”), in Laval, Quebec, Canada. Respondent agrees the collection and processing of the A and B bottles, Sample # 1055571 was conducted appropriately and without error.¹⁸

¹³ Id.

¹⁴ Id. Comment to Article 10.2.1.1

¹⁵ R3, Respondent’s USADA’s Education History.

¹⁶ C4, USADA Educational Material and R3, Id.

¹⁷ C5, Doping Control Form dated June 10, 2022.

¹⁸ R13, CEO Scott Report.

The Laboratory reported Respondent's A Sample #1055571 as an AFF for DHCMT M3.¹⁹ Thereafter, as per Respondent's request, the B Sample # 1055571 was also analyzed and confirmed the presence of DHCMT M3. Although the AAF reported positive for dehydrochlomethyltestosterone ("DHCMT") and Chlorodehyromethylanrostenediol ("CDMA"), on this record, the Parties primarily addressed the DHCMT M3 as a long-term metabolite of DHCMT.

46. DHCMT was developed in the 1960s by East German pharmaceutical agencies. The drug was initially marketed as oral Turinabol.²⁰ DHCMT is a derivative of testosterone with enhanced anabolic properties that provide performance-enhancing benefits. Those benefits include, but are not limited to, increased muscle mass and strength.²¹
47. Chlorodehyromethylanrostenediol ("CDMA"), also known as Halodrol and Halo-Plex, is a related designer androgenic steroid.
48. DHCMT is a non-specified classified substance on the WADA Prohibited List as an S1 Anabolic Agents.²² DHCMT undergoes an extensive and complex metabolism process in the liver wherein the compound is chemically altered to various metabolites, including the DHCMT M3, the long-term metabolite at issue in this case.²³ DHCMT is a highly lipophilic drug, which may contribute to the prolonged time DHCMT or its metabolite DHCMT M3 remain in the human body. DHCMT M3 can remain in the human body for a longer period than its parent compound DHCMT.²⁴ Pharmacokinetic studies have also shown that the circulation of bile from the liver to the small intestine, and back to the liver, may also extend the time DHCMT and its metabolites remain in the human body.²⁵
49. DHCMT M3 is a urinary long-term metabolite of DHCMT. A long-term metabolite refers to metabolites that are excreted from the human body over an extended period of time. The presence of the DHCMT M3 metabolite is the result of the ingestion and/or use of DHCMT Methylclostebol, Halodrol, and Promagnon. All of these anabolic agents are prohibited substances listed on the WADA Prohibited List. DHCMT M3 is known as an inactive metabolite with no therapeutic effect. An inactive metabolite means that DHCMT M3 does not produce the physiological effects or the performance-enhancing benefits of the parent compound (i.e., DHCMT), because it is a byproduct of the metabolism of the DHCMT.²⁶ Generally, the metabolite is what is detected in the urine and not

¹⁹ The Parties agree the reference to DHCMT M4 in the Laboratory documentation is the same as the DHCMT M3 long-term metabolite. See C9, Dr. Fedoruk Report and Scott Report.

²⁰ C9, Dr. Fedoruk Report.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

the parent compound/doping substance. It is scientifically recognized that the presence of DHCMT M3 metabolite in the urine is the result of the ingestion/use of DHCMT, Methylclostebol, Halodrol and Promagnon.²⁷

50. The detection time of the DHCMT metabolite depends on numerous factors related to the drug's pharmacokinetics. These factors include the individual's physiology and genetics, urine sample characteristics, the detection method employed, and the specific circumstances of the drug and its use. A long-term metabolite, such as DHCMT M3, can be excreted in the urine for extended periods of time in low but detectable amounts. For this reason, the detection of urinary metabolites, including DHCMT M3, has emerged as one of the accurate means to identify athletes who have ingested DHCMT.²⁸ Notwithstanding the ability to detect DHCMT M3 for extended periods of time, there is no means to determine the precise time period for the detection of the DHCMT and its metabolites M3. Regarding the time period of detection, all experts who testified in this proceeding described the challenges associated with researching and studying the detection time period of an unapproved drug such as DHCMT. In essence, it is difficult to obtain the necessary ethical approvals to administer therapeutic doses of an unapproved drug (i.e., anabolic steroids) to humans. Nonetheless, the available data cited by all experts at this proceeding show the detectability of the DHCMT M3 excreted in the urine for extended time periods is varied. Whether the available scientific data is sufficient to estimate how long the DHCMT M3 can remain in the human body or how long it takes to be completely excreted from the body, is at the heart of the dispute in this case.
51. The source of the DHCMT for the DHCMT M3 found in Respondent's urine is unknown.
52. Respondent explained, in great detail, his healthy eating habits and how he grew up with "farm to table" food. Respondent also described himself as a "clean weightlifter" who cares about what type of food and/or supplements he consumes to ensure he is fit to compete and in compliance with the Code. As such, Respondent stated he carefully reviews the labels on all the products that he uses and stays away from products on USADA's High Risk list. Respondent noted he even declined treatment in 2022 related to a spot on his back out of concern that the medication may contain a prohibited substance. He denied using any sexual enhancement product that may have been contaminated with DHCMT and denied using any of the products related to DHCMT. For all these reasons, Respondent expressed he was shocked and in disbelief when he learned that his samples tested positive for a prohibited substance.

²⁷ Id.

²⁸ C1, Dr. Dalton Report.

53. Respondent described all his efforts to attempt to identify the source of the DHCMT M3 in his urine in 2022. His efforts included preparing comprehensive lists of the supplements he has taken going back to 2001 and the medicine he has consumed since 2015.²⁹ Respondent also provided a list of products and supplements used by his life and business partner, Kim Kalishek (“Kalishek”), who also reviewed all the products used by Respondent and her. Respondent also requested that a sample of Dymatize Creatine he consumed in previous years be tested by Korva Scientific Laboratory. He requested that laboratory to test the Creatine to see if it contained DHCMT because he had shared a scoop of the supplement with another competitor.³⁰ The laboratory determined the Creatine did not contain DHCMT or Halodrol or menthylclostobol.³¹ Respondent also indicated that in 2001, while a member of the Powerhouse Gym in Northeast Philadelphia, he consumed a free drink from the Gym without knowing what was in the drink.
54. Respondent described his frequent travels to many places around the world, including Central and South America, Asia, Japan and Turkey.³² He described his eating habits when traveling as part of his efforts to identify the source. Respondent also indicated he was vaccinated for Anthrax by the US government in the 1990s when he was employed as a contractor for the U.S. government. Thus, as part of his diligent efforts to identify the source, Respondent reviewed most of the information within his reach including his travel history, employment history, and the history of all supplements, products and medicines taken by him and his partner Kalishek.
55. Nonetheless, despite all of his efforts, Respondent was not able to identify the source of the DHCMT M3 found in his urine in June 2022.
56. Respondent cooperated with USADA’s investigation related to the charges of ADRV against him.³³ There is no record indicating that Respondent failed or refused to respond to any of USADA’s requests for information.
57. Paul Scott (“CEO Scott”) is the Chief Executive Officer for Avrok Laboratories, LLC. Previously, from December 2014 to May 2020, he served as the President of KorvaLab, Inc. CEO Scott appeared in this proceeding as Respondent’s expert. CEO Scott acknowledged that he is not an expert in pharmacokinetics and has no high-level education in a science-related field. CEO Scott prepared a report to address, in part, the unique nature of the DHCMT M3 long-term metabolite and the difficulties involved with the determination of the detection time periods for the DHCMT M3

²⁹ R7, Respondent Supplement List and R8, Respondent Prescription List.

³⁰ R10, Korva Scientific Test Result Creatine.

³¹ *Id.*

³² R2, Respondent’s Travel History.

³³ R11, Audio Recording of USADA interview on December 13, 2022.

excretion from the human body.³⁴ CEO Scott also reviewed the reports prepared by USADA’s experts.³⁵ He found that none of the supplements, medicines and/or products including the Creatine shared by Respondent with another athlete or Kalishek’s list of products, were the source of the DHCMT M3 found in his urine.³⁶ Nonetheless, CEO Scott indicated, the supplements and medications on Respondent’s lists may have been contaminated because they may have contained unlisted ingredients that may be the source of the DHCMT M3 in his urine. Without testing the products, CEO Scott stated, it is impossible to determine if the source of DHCMT M3 was contained in one or more of the supplements or medication included on Respondent’s lists.³⁷

58. Regarding Respondent’s AAF, CEO Scott maintained throughout this proceeding that it is possible the source of the presence of DHCMT M3 in Respondent’s urine was administered prior to 2016. CEO Scott acknowledged “it is not knowable” whether this is what actually happened in this case.³⁸ CEO Scott further explained the AAF of DHCMT M3 at approximately 10pg/ml coupled with the lack of information about the source of DHCMT and the lack of information about the medium-term metabolites found in his urine, is sufficient to conclude the source of the DHCMT M3 was administered before June 2022. However, CEO Scott indicated, whether the DHCMT was administered weeks, months or years before June 10, 2022, is simply “unknowable.”³⁹

59. Although the data indicates DHCMT M3 can remain in the body for prolonged periods of time, CEO Scott pointed out, the precise period for detection is still unknown. CEO Scott attributed the lack of understanding about the detection time period of the DHCMT M3, in part, to the lack of a multiple subjects administration study and/or published study that have attempted to define the outer limits of the excretion of DHCMT M3 from the system after the administration of the DHCMT (i.e., Halodrol, Promagnon or methylclostobol).⁴⁰ Additionally, CEO Scott reasoned, a determination of how long the excretion of DHCMT M3 could last is challenging because DHCMT M3 is known to “pulse” during the tail-end of its excretion.⁴¹ CEO Scott defined “pulse” of DHCMT M3 metabolite as the appearance, disappearance and re-appearance of the DHCMT M3 at detectable levels in the urine. CEO Scott stated the presence of the DHCMT M3 for prolonged time periods post the administration

³⁴ R13, CEO Scott Report

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

may be related to the highly lipophilic 4-chloro nature of the metabolite, which causes a slow and periodic release from the adipose tissue or other tissues.⁴²

60. [REDACTED]

61. In his report, CEO Scott cited specific cases and studies where the excretion of the DHCMT M3 in the urine “pulsated” for prolonged periods of time because the tests administered show how an athlete tested negative a number of times then again tested positive after various negative results.⁴³

[REDACTED]

62. In response to USADA’s experts’ assertions that no scientifically reliable data exists to reach a reasonable conclusion that DHCMT M3 can last in the body longer than 240 days, or 3.5 years, CEO Scott questioned the reliability of the studies USADA’s experts relied upon for their assertions. For example, CEO Scott indicated that no multiple subject study had been conducted to define the outer limits of the excretion of DHCMT M3.⁴⁴ Regarding the study wherein the presence of DHCMT M3 was not detected 240 days after a single oral administration of 20 mg of DHCMT,⁴⁵ CEO Scott reasoned the data is insufficient to determine the outer limits of the excretion of DHCMT M3 after the administration of the DHCMT because there is no indication whether the study ended because

⁴² Id. at 5

⁴³ Id. at 8

⁴⁴ In his report, CEO Scott also cited Ref. 2 a clinical study of different chlorinate compound (i.e., clomiphene), which involved multiple subjects and multiple administrations of clomiphene in high levels (hundreds of pg/ml). In the clinical study concerning the clomiphene compound, the level of Zyclomiphene was detected 266 days after the study ended. R13 at 7. Note Dr. Fedoruk indicated the clomiphene compound is not similar to the DHCMT compound that is at issue in this case.

⁴⁵ This refers to Ref. 2 in R13, CEO Scott Report

DHCMT M3 was no longer excreted in the urine of the subjects or because the study simply ended. CEO Scott also expressed the scope of the study was limited since it was based on only a single dose of administration of 20 mg of DHCMT. CEO Scott posited a study of a single dose administration of DHCMT is not conclusive because the pharmacokinetics and excretion kinetics are affected by multiple dosing.⁴⁶

63. In response to the studies cited by USDA relating to Athletes C, D, E and F, CEO Scott indicated the data collected from these studies demonstrates the pulsating nature of DHCMT M3, because the testing of these athletes showed how the metabolite appeared, disappeared and re-appeared in their urine tests. In this regard, CEO Scott maintained the DHCMT M3 disappeared and reappeared without a new administration of the drug. This assertion was contested by the experts called by USDA, i.e., doctors Dalton, Fedoruk and Eichner, all of whom indicated there may have been a new administration of the drug before it re-appeared. Nonetheless, CEO Scott maintained there are known cases, as discussed in his report, where the athlete admitted the use of DHCMT and continued to excrete DHCMT M3 at low levels from the urine years after the DHCMT was ingested.
64. As for the identification of the source, CEO Scott explained the long window for the detection of DHCMT M3, specially at low levels, makes it practically impossible to identify the source of the parent compound, since usually the sources have been consumed or disposed of by the time the metabolite is detected in the urine. For these reasons, CEO Scott explained it was not possible to identify the source in Respondent's case despite all of his efforts.
65. Respondent also presented his life and business partner, Kalishek, who corroborated that he is a healthy eater and very conscientious about the food and products he consumes. She indicated that she helped him with preparing the lists of products, supplements and medicines they both have used dating back to on or about 2001. Kalishek explained that she prepared the lists based on the purchasing records (i.e., credit card receipts and online records) that she has kept throughout the years. She described him as an honest man, a person of integrity who is well respected by all his colleagues and weightlifting team members in the sport of weightlifting.
66. Similarly, Respondent's coach Micah McBeth ("McBeth"), and Marcy Rose ("Rose"), both of whom have known Respondent as an avid weightlifter and a man of integrity, testified on his behalf. They both expressed they were surprised to learn that he tested positive for a prohibited substance because they know him as someone who respects the rules and loves the weightlifting sport. All character witnesses were steadfast in maintaining Respondent does not cheat and is well known as an athlete follow the rules of the game.

⁴⁶ Id.

67. USADA called Dr. James T. Dalton (“Dr. Dalton”), Executive Vice President and Provost at the University of Alabama, who holds a Ph. D. in Pharmaceutics and Pharmaceutical Chemistry from Ohio State University. Dr. Dalton’s doctoral dissertation was entitled, “Pharmacokinetic and Pharmacodynamic Implications of Drug Absorption from the Urinary Bladder.”⁴⁷ In 2016, Dr. Dalton was named a Fellow of the American Association of Pharmaceutical Scientists, the highest honor in the nation. Dr. Dalton explained pharmacokinetics is the study of drugs within the body after the drug is administered, including the study of the changes that take place with a drug and metabolite concentrations in a given time period. To understand the changes in a drug or metabolite concentration in a particular period of time, which is at issue in this case, Dr. Dalton indicated that pharmacokinetics studies include the analysis of the drug absorption, distribution, metabolism, and the excretion from the human body, and the relationship of all these processes to the pharmacological effects of a drug. The analysis of pharmacological effects in the body takes into account both the therapeutic effects as well as the toxic effects of a drug. Dr. Dalton also noted the scientific field of pharmacokinetics requires a significant specialized education and experience because of the complexities involved in the mathematical modeling, chemistry, drug properties, physiologic parameters, and the analytical instruments that are necessary to understand the changes that take place in the human body with the drug metabolism.⁴⁸
68. Dr. Dalton indicated DHCMT, and CDMA, are closely related compounds. They are both designer anabolic androgenic steroids.
69. The controlled pharmacokinetics studies mentioned by Dr. Dalton in his report indicated the metabolite DHCMT M3 circulate longer in the body than the parent compound DHCMT. This, Dr. Dalton stated, allows for the “ideal targets for anti-doping analysis” because it has an extended window for the detection of DHCMT in the body.⁴⁹ Dr. Dalton has been involved in the detection of techniques to detect certain prohibited substances.
70. Regarding the Shanzer study, cited in Dr. Dalton’s report, where the subjects were administered a single 20 mg dose of oral DHCMT, Dr. Dalton noted in the study DHCMT M3 could be detected for about 24 days at levels exceeding 50 pg/ml; for up to 100 days at levels approaching 20 pg/ml; and for up to 240 days at lower levels.
71. He described the controlled studies cited in his report as “the gold standard” for the detection of DHCMT because the data included the exact dose given to the subjects and the precise time for the

⁴⁷ C16, Dr. Dalton’s Curriculum Vitae.

⁴⁸ C1, Dr. Dalton Report and C16, Dr. Dalton’s Curriculum Vitae.

⁴⁹ Id.

excretion in the urine. These controlled studies show the longest time at which DHCMT M3 metabolite can be detected in the urine after ingestion of a single dose of DHCMT is about 240 days, (i.e., about 8 months).⁵⁰

72. Dr. Dalton referred to the observation studies based solely on the urinary excretion data as “wholly unreliable.”⁵¹ Dr. Dalton stated, when the length of time between the last ingestion and the urine collection, the source, the amount of dosage, the frequency and/or the duration of the ingestion of the DHCMT, are all unknown, then the data obtained to interpret the DHCMT M3 pharmacokinetic is simply unreliable.

73. In contrast, Dr. Dalton indicated, that based on the studies of the athletes who provided the amount and the timing of the multiple DHCMT dosages ingested, the data collected for Athlete A suggests the longest time that M3 can be detected in the urine after repeated high dose administration of DHCMT, is less than 3 years.

74. As for Athlete B, who admittedly used oral DHCMT (two 20 mg pills per day) for approximately three months with an estimated last ingestion on November 1, 2018, and who was tested a total of 24 times between December 12, 2018, and January 7, 2021, Dr. Dalton noted the data obtained from Athlete B suggests that the longest the M3 metabolite can be detected in the urine after repeated high dose administration is less than two years.

75. Regarding the data collected for Athletes C, D, E and F, Dr. Dalton described the data as unreliable because the drug source was unknown and because the time of drug ingestion was unknown.⁵²

76. [REDACTED]

77. Dr. Dalton indicated that there has not been a single, reliable report of the DHCMT M3 metabolite detected in a urine sample for more than 2.75 years after ingestion of high and repeated doses of DHCMT. He also expressed that the analysis of data concerning the outer bounds for the excretion of DHCMT involved “a lot of guessing.”⁵³ Dr. Dalton also indicated that where the DHCMT M3 appeared for a longer period in uncontrolled studies, it is unknown whether DHCMT was readministered during the gap in time.

⁵⁰ Id.

⁵¹ Id.

⁵² Dr. Dalton’s testimony

⁵³ Dr. Dalton’s testimony

78. Regarding Dr. Dalton's review of Respondent's case and his AAF, Dr. Dalton stated that he considered all of his employment history, the vaccination he received from the U.S. government, his travels throughout the world, and the unidentified juice he drank in the PowerHouse Gym in 2001.
79. Dr. Dalton stated that neither a single ingestion of a high dose of DHCMT or CDMA in a single drink at a Powerhouse Gym over 20 years ago, nor a vaccine(s) received over 30 years ago, could possibly be the source for the DHCMT M3 metabolite detected in Respondent's urine in June 2022. Furthermore, Dr. Dalton indicated Scavilla's positive test in June 2022, was the result of ingesting CDMA or DHCMT after June 9, 2016.⁵⁴
80. Dr. Dalton examined the likelihood that the DHCMT M3 metabolite in the urine excreted by Respondent on June 22, 2022, resulted from the ingestion of CDMA and/or DHCMT before June 9, 2016.
81. Dr. Dalton stated he is confident the DHCMT M3 metabolite detected in Respondent's urine on June 10, 2022, was not due to ingestion of DHCMT or CDMA before June 9, 2016. Dr. Dalton indicated there is no reliable pharmacokinetic data to support the conclusion that the DHCMT M3 metabolite can be detected in the urine over 4 years after the ingestion of a single dose or up to 3 months of daily ingestion of high doses of DHCMT.
82. Dr. Dalton also indicated there is no data to show the process of elimination of the drugs, including the DHCMT M3, from the human body changes with the age of the individual.
83. USADA presented Dr. Daniel Eichner, the President and Director of the Sports Medicine Research and Testing Laboratory ("SMRT") in Salt Lake City. Dr. Eichner has extensive experience in running a WADA-accredited laboratory involved in research and routine testing and anti-doping in sports research. Dr. Eichner addressed the reference to his testimony before the Nevada State Athletic Commission in 2019, which was cited by CEO Scott in his report.⁵⁵ Dr. Eichner indicated that while the reference to his testimony is accurate, since 2019 "a lot has been learned" about the DHCMT M3 as a long-term metabolite. In this regard, Dr. Eichner noted, he is one of the experts who has been involved in the research of the DHCMT M3 long-term metabolite, "more than anyone in the world." Since 2019, Dr. Eichner indicated the data from many athletes who tested positive for DHCMT M3 has been collected and now researchers and experts know more about how long DHCMT M3 can be detected in the urine. Dr. Eichner expressed he is "comfortable" with his opinion about the DHCMT M3 excretion from the body because, as of now, "I have seen everything so far."⁵⁶ As such, Dr. Eichner

⁵⁴ C1, Dr. Dalton Report.

⁵⁵ R13, CEO Scott Report

⁵⁶ Dr. Eichner's testimony.

indicated there is no scientific data to support the conclusion that DHCMT M3 can remain in the body for six or eight years, as suggested by Respondent.

84. As for Athlete D, Dr. Eichner indicated there is no data to indicate that the athlete did not re-administer the drug during the 13 months period of the testing. Specifically, Dr. Eichner challenged CEO Scott's claim that it is possible for the DHCMT M3 to be excreted from the body six years after the use of DHCMT. In so doing, Dr. Eichner indicated there is no data to support the conclusion the DHCMT M3 can remain in the system for six years.
85. USADA presented Dr. Matthew Fedoruk, Ph.D. ("Dr. Fedoruk"), the Chief Science Officer for USADA Science and Research unit. Dr. Fedoruk is an expert in the field of sport anti-doping and sport drug testing. He has a Ph D. in Pathology and Laboratory Medicine and has over 15 years of experience in the sport anti-doping field. Specifically, Dr. Fedoruk is an expert on the substances prohibited by the Code. As part of his job responsibilities, Dr. Fedoruk provides scientific guidance and opinions to the USADA' Science and Research staff related to the detection of performance-enhancing drugs in sports.⁵⁷
86. Dr. Fedoruk reviewed all analytical data provided by the Laboratory, concerning Respondent's Sample 1055571, for the A and B bottles collected from Respondent. He also reviewed the lists of supplements, medications and products provided by Respondent as well as CEO Scott's report.
87. Based on his review, Dr. Fedoruk indicated that none of the product listed on the lists provided by Respondent are listed on USADA High Risk List. Dr. Fedoruk also indicated that USADA is not aware of any FDA-approved prescription drug to contain DHCMT or other related compound that would produce a DHCMT M3 positive urine test. Dr. Fedoruk also noted DHCMT is not used in the agricultural industry to promote animal growth. As for vaccines, Dr. Fedoruk pointed out that vaccines do not contain anabolic agents such as DHCMT or CDMA.⁵⁸
88. As for the detection time related to DHCMT M3, Dr. Fedoruk acknowledged the urinary excretion of DHCMT M3 may appear and disappear at low pg/ml levels in urine collections over some periods of time. Nonetheless, Dr. Fedoruk, indicated that USADA is not aware of any positive test of a known DHCMT administration beyond 2.4 years. In conclusion, Dr. Fedoruk opined there is "no plausible scientific evidence with DHCMT, or any other drug" to conclude that DHCMT M3 detectability could extend to six years or more after its ingestion, as claimed by Respondent.
89. As for CEO Scott's indication that "it's possible" the DHCMT M3 could be detected six years after the administration of DHCMT, Dr. Fedoruk noted CEO Scott's comparison of DHCMT M3 to the

⁵⁷ C17, Dr. Fedoruk's Curriculum Vitae

⁵⁸ C9, Dr. Fedoruk Report

long-term clomiphene metabolites is immaterial to DHCMT M3 excretion as clomiphene metabolites is produced by a different drug.⁵⁹

90. The claim that DHCMT M3 is detectable for about 1241 days (3.4 years) between the first and last positive tests, is unreliable and “problematic” because the cases cited by CEO Scott do not indicate whether the DHCMT or other related steroid was used during the period the DHCMT M3 re-appeared in the urine after the athlete tested negative. Thus, Dr. Fedoruk noted, it is possible, without confirmation, that re-exposure or re-administration of the DHCMT occurred.
91. Regarding GW1516, cited by CEO Scott, this was described in relevant part by Dr. Fedoruk as a peroxisome proliferated-activated receptor, which is a metabolic modulator listed on the WADA Prohibited List. GW1516 is not approved by any regulatory body for use as a medicine. Thus, it is not legally permissible to use in any dietary ingredient or dietary supplement. Notwithstanding its unapproved status, GW1516 can still be found for sale on the internet where dietary supplements or products with this prohibited substance are sold on the internet. Dr. Fedoruk noted that WADA’s High Risk list of supplement products contains about 49 products associated with the presence of GW1516.⁶⁰
92. Regarding LGD-4033, described as selective androgen receptor modulator (“SARM”), associated with the treatment for muscle wasting and weakness associated with aging, Dr. Fedoruk pointed out that it has not been approved by the FDA and is listed on WADA Prohibited List as an anabolic agent. There are high risk supplement products associated with the presence of 40 LGD-4043 that are listed on WADA High Risk list. Dr. Fedoruk noted all SARMs are always prohibited for all athletes. Its use in dietary supplement is not authorized by any regulatory agency.

X. USADA SUBMISSION:

93. USADA asserted that the competent testimony and the data presented by all of its experts is sufficient to demonstrate Respondent was an athlete subject to the Code when he used the prohibited substance at issue. All of its experts, including Dr. Dalton, who is one of the most renowned experts in pharmacokinetics, indicated they are confident Respondent’s use of DHCMT M3 did not take place before 2016.
94. USADA pointed out that CEO Scott conceded he is not an expert in pharmacokinetics and offered no opinions based on the available scientific data. Instead, CEO Scott simply concluded that: “it’s possible” Respondent used DHCMT M3 before 2016. USADA contends Scott’s opinion that “it is possible” Respondent used DHCMT M3 before June 2016, is no more than a “theoretical

⁵⁹ Id.

⁶⁰ Id.

possibility.” For these reasons, USADA submits CEO Scott’s testimony is insufficient to undermine the opinions of the three preeminent and highly qualified experts in the field of Pharmacokinetic and sports anti-doping. These experts are confident the DHCMT M3 was ingested after Respondent joined the USAW on June 19, 2016. Furthermore, to establish the ADRVs, USADA noted, it is not required to show the prohibited substance enhanced Respondent’s performance, as Respondent suggested. In this respect, USADA indicated Dr. Fedoruk explained it is not required by the Code due to the difficulties in tracing the enhanced performance to the prohibited substance(s).

95. USADA argued all the possible sources of DHCMT M3 suggested by Respondent do not contain DMCHT. In this regard, it indicated the competent testimony and information provided by its experts show DHCMT is not used as a growth promoter in livestock or use for vaccine.⁶¹ Moreover, while the precise periods for the detection of DHCMT M3 are unknown, USADA argued there is no reliable scientific evidence to establish it can be detected six years after the use of DHCMT, as Respondent claims in this case. As indicated by Dr. Dalton, based on the controlled study of a single dose cited by Dr. Dalton, the longest time that M3 metabolite can be detected in the urine after ingestion of a single dose of DHCMT is approximately 240 days.⁶² Similarly, the data provided by athletes in the observational studies which involved admitted multiple use of oral Turinabol over a period of months, show none of athletes tested positive for DHCMT M3 at any level after more than thirty months after their reported last administration of the drug.

96. [REDACTED]

97. For all these reasons, USADA posited it met its burden to establish Respondent was an Athlete subject to the Code when he used the DHCMT M3 found in his urine. Since Respondent does not contest B Sample positive results for DHCMT M3, USADA asserted it met its burden of proof to establish the charged ADRVs against Respondent.

⁶¹ USADA PHC at 7

⁶² Rx, Dr. Dalton Report; see also C11, the Excretion Data Examples cited by Dr. Dalton.

98. USDA further asserted that for an ADRV of a non-specified substance, the sanction provided by the Code is a period of four years ineligibility. For a reduction of the default period of four years for the use of a Prohibited Substance, it is Respondent's burden to demonstrate by a balance of probability the ADRV was not intentional for the reduction of the four years of ineligibility. USADA asserted Respondent failed to meet his burden because all he offered was speculation and theories as to how DHCMT entered his system.

99. USADA argued that arbitral precedent dictates evidence of good character and a credible denial is insufficient to meet the athlete's burden of proof.⁶³ In support of this contention, USADA cited the *Daiders* case, wherein the panel concluded a general denial is insufficient to meet the Athlete's burden. In *Daiders*, the panel concluded a denial of the ADRV may be as credible for those who do not cheat as for those who do indeed cheat. USADA cautioned against setting an arbitral precedent where Respondent's burden may be established without the need of concrete evidence that it was unintentional. USADA argued such determination would lower Respondent's burden and would effectively remove the DHCMT from the list of prohibited substances.

100. Moreover, in this case, USADA noted, it is uncontroverted that the source of the DHCMT M3 positive test is unknown. In so doing, USADA argued that without knowing the source, it is practically impossible to demonstrate whether the ADRV was intentional.⁶⁴ In support of this contention, USADA cited the comment to Article 10.2.1 of the Code which explicitly it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance. [emphasis added]⁶⁵states,

it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance. [emphasis added]⁶⁶

101. USADA also posited Respondent's efforts in attempting to identify the source is irrelevant to the determination as to whether the violation was unintentional. USADA maintained there is not a single case where the Panel's determination relied solely on the athlete's denial about the intentional use of the prohibited substance.

⁶³ R1, *Villanueva v. FINA*, CAS 2016/A/4534, where the panel noted the issue is not whether the athlete is a cheater. Check case.

⁶⁴ C13, *FINA v. Bokvadze*, CAS 2017/A/5392; *WADA v. Daiders*, CAS 2014/A/3615

⁶⁵ C8, the Code.

⁶⁶ C8, the Code.

102. As for the cases cited by Respondent, (i.e., *Jack*, *Ademi*, *Schoeman*), USADA argued reliance on these cases is misleading because none of them determine intent without proof of the source. According to USADA, the cases cited by Respondent only “theorize” that it is possible to demonstrate lack of intent without establishing the source. For example, USDA submits that *Jack* is different than Respondent’s case because the metabolite in *Jack* was LGD-4033, which is a known contaminant of food supplements. The *Ademi* case involved a unique set of circumstances significantly different from Respondent’s case in which the laboratory results detected “Suspect peaks for stanozolol” in the product but did not confirm the presence of stanozolol in the product. Given the laboratory results, USADA argued, the Panel concluded the athlete’s explanations in such set of circumstances was sufficient to meet the burden of proof. The laboratory results in this matter are consistent and show no “suspect peaks.” USADA argued *Schoeman*, cited by Respondent, is inapplicable to the circumstances of this case. It argued *Schoeman* involved a common contaminant GW1516. In *Schoeman*, the Panel determined the positive test resulted from a contaminated supplement even though the athlete was unable to identify the source. In this case, there are no known supplements contaminated with DHCMT. The only possible source in this case, as noted by CEO Scott, is a sexual enhancement pill found in the gray-market. Nonetheless, on this record, there is no evidence to indicate that may have been the source.
103. Furthermore, in Respondent’s case, USADA noted, it is uncontroverted that none of the dietary supplements or medications on Respondent’s lists or the food or beverage described by him could have been the source for the DHCMT M3 found in his urine. As such, USADA maintained all that Respondent offered at the arbitration proceeding were theories of what could have been the source of the prohibited substance found in his urine.⁶⁷ In this regard, USDA referred to the Panel reasoning in *Blazejack* that:

The Panel though willing to believe that Mr. Blazejack did not cheat, needs more than theories about the contaminated meat or supplements. Mr. Blazejack needs to give the Panel some evidence which constitutes a probable source of the positive result. The circumstance where the evidence is to be solely the athlete’s denial of intent would be very unusual.⁶⁸For all the foregoing reasons, USADA asserted Respondent failed to meet his burden to show the violation was not intentional. Accordingly, USADA asked for the following sanction in accordance with the Code.

⁶⁷ C13, *USADA v. Blazejack*, AAA No. 01-16-0005-1873

⁶⁸ C10, *USADA v. Blazejack*, AAA No. 01-16-0005-1873 at 7.7

XI. RESPONDENT'S SUBMISSION:

104. Respondent asserted USADA failed to establish to the Arbitrator that he was an Athlete, as defined by the Code, when he ingested the DHCMT M3 prohibited substance. Respondent argued it is not enough to demonstrate he tested positive for a prohibited substance. To meet its burden of proof, USADA must take into account the circumstances of the case⁶⁹ and also demonstrate Respondent was an Athlete subject to the Code when he ingested the DHCMT M3. This, Respondent contended, USADA cannot prove because the precise period for the excretion of DHCMT M3 in the urine is currently unknown.
105. Respondent indicated it is not necessary to identify the source of the prohibited substance at issue to establish lack of intent.⁷⁰ Respondent noted the standard to establish No Fault, or Negligence and No Significant Fault ,or Negligence, does require for the source to be identified by the athlete. Respondent reasoned if the intent was for the standard for a non-intentional violation to identify the source, the Code would explicitly indicate such requirement as it has done for the No Significant Fault provision. Notwithstanding, Respondent concedes without knowing the source, Respondent has “the narrowest of corridors” to establish the lack of intent.⁷¹ Respondent argued the analysis as to whether the violation was intentional should consider the totality of the credible record to determine whether Respondent proved by the balance of probabilities whether the violation was unintentional.⁷²
106. Respondent argued CEO Scott competently explained the difficulties involved in determining how long the DHCMT M3 stays in the human body after the use of the DHCMT prohibited substance. CEO Scott described the lack of reliable data and the absence of any study attempting to define the outer limits of the time period for the DHCMT M3 to be excreted from the urine and the precise time period for the excretion of the M3 from the urine.
107. Respondent also argued the data published by the Locke et al. study, which shows the DHCMT M3 was detected in the subject urine 240 days after DHCMT was administered, is limited in scope because the study only involved the administration of a single dose. In this regard, Respondent indicated it is uncontroverted the Locke et al. study ended without indicating if the DHCMT M3 had been completely excreted from the athlete's system or whether the study simply ended as scheduled. For these reasons, Respondent argued, the Locke et al study is not as conclusive as suggested by

⁶⁹ R15, *Ivanov v. IOC*, CAS 2018/A/Article 3.1

⁷⁰ Article 10.2.1 See also R16, *Ademi v. UEFA*, CA 2016/A/4676; R18, *Jack v. Swimming Australia & Asada*, CAS A1/2020 at 81; *Shoeman v. RSASF*, FINA Doping Panel 01/20

⁷¹ Respondent PHC, at 9

⁷² *Jack v. Swimming Australia & Asada*, CAS A1/2020

USADA. Thus, according to Respondent, the data provided by the Locke et. al study is insufficient to determine how long the metabolite remains in the body after the use of the DHCMT prohibited substance.

108. Additionally, as noted by CEO Scott, DHCMT M3 pulsates by appearing, disappearing, and re-appearing in the urine for extended periods of time. Such data, Respondent reasoned, supports CEO Scott's assertion that the DHCMT can remain in the human body for years. [REDACTED]

[REDACTED]

109. [REDACTED]

[REDACTED]

110. [REDACTED]

[REDACTED]

111. [REDACTED]

[REDACTED]

112. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Specially as in Respondent's case, when the presence of the DHCMT M3 in the urine is at such a low level for an extended period of time.

113. For all the foregoing reasons, Respondent contended it is impossible to ascertain that Respondent was an Athlete as defined by the Code when he used the DHCMT prohibited substance at issue.
114. If the Panel finds Respondent guilty of the ADRV charged by USADA, Respondent contends the credible record is sufficient to demonstrate, without proving the source, that he did not intend to violate the anti-doping rules at issue. Respondent conceded that when the source is unknown it is difficult for the athlete to establish the ADRV was non-intentional.⁷⁵ Nonetheless, Respondent posited under Article 2.1, he presented sufficient evidence to meet his burden of proof.
115. For example, he provided a comprehensive list of the supplements and medicine he has taken since 2001. Regarding the lists of the dietary supplements and medicine used by Respondent, he noted, CEO Scott's review of the products confirmed there was nothing in the label to indicate the presence of DHCMT.
116. Respondent presented his life partner, Kalishek, and his coach, McBeth, both corroborated he is an athlete who follows the rules, cares about what goes into his body, and is a man of integrity. Respondent also cited the record evidence that demonstrate all his efforts to identify the DHCMT M3 source. Despite all of his efforts, he was simply unable to identify the source.
117. Respondent maintained his credible testimony shows he has no idea how the prohibited substance entered his system. In so doing, Respondent argued the low level of DHCMT M3 concentration found in his urine coupled with the absence of the parent compound in the urine indicates the source was administered prior to June 2022. Respondent also suggested the fact that the DHCMT M3 has no performance enhancement benefits tends to support Respondent's claim that the violation was unintentional.
118. For all the foregoing reasons, Respondent asserted he met the burden to demonstrate by a balance of probability that the ADRV in this case was not intentional. Accordingly, if Respondent is found guilty, he asked for his sanction to be reduced to two years.

⁷⁵ R1, *Villanueva v. FINA*, CAS 2016/A/4532 at 37

XII. ANALYSIS AND FINDINGS:

A. USADA Established to The Comfortable Satisfaction of the Arbitrator That Respondent Was a Member of the USAW When He Ingested The DHCMT M3.

119. Pursuant to Article 2.1 of the Code, USADA is required to establish that: (1) Respondent was an Athlete, as defined by Code; and (2) the B sample analysis confirmed the finding of the prohibited substance or its metabolites or markers in the A sample.⁷⁶

120. Under Article 2.2 of the Code, it is not necessary that intent, Fault, Negligence or knowing use on the Athlete's part be demonstrated for USADA to establish the anti-doping rule violation for the Use of a Prohibited Substance or a Prohibited Method.

122. To establish an Article 2.2 ADRV for the use of a prohibited substance, USADA is required to establish Respondent, (1) was an Athlete and (2) Respondent used a prohibited substance.

123. In this case, the only element at issue for the charges that Respondent violated Article 2.1 and Article 2.2 of the Code is whether Respondent was an "Athlete" as defined by the Code when he used DHCMT or another chlorinated steroid.

124. Respondent agrees that he became an Athlete, as defined by the Code, and subject to the Code and Applicable Rules when he joined the USAW in June 2016. As such, for USADA to establish the ADRV charges against Respondent to the comfortable satisfaction of the Arbitrator, USADA was required to establish the use of DHCMT, or another chlorinated steroid associated with DHCMT M3 after June 2016.

125. The Arbitrator find USADA met its burden to prove to the comfortable satisfaction of the Arbitrator that Respondent was a member of the USAW subject to the Code when he ingested DHCMT.

126. The competent testimony as well as scientific data presented by USADA's uniquely qualified experts is sufficient to establish the source of DHCMT M3 found in Sample # 1055571 was ingested after Respondent became a member of the USAW. In so doing, the Arbitator considered that the three experts USADA presented are world renowned experts highly specialized in the doping in sports field.

127. For example, Dr. Dalton, recognized as one of the nation's experts in pharmacokinetics, has been at the forefront of the research and analysis of the testing techniques used to detect doping in sports.

⁷⁶ C8, The Code Article 2.1.2

Dr. Eicher also indicated he has been involved, “more than anyone else in the world” in the research and analysis of doping in sports, including the research and analysis concerning DHCMT M3 as a long-term metabolite.

128. I also considered Dr. Fedoruk, the Chief Science Officer for USADA, is not only specialized in the field of doping in sports but he is also fully familiar with all the data presented in this case and the methodologies involved in the detection of prohibited substances. All these experts indicated in no uncertain terms that they are confident DHCMT M3 was ingested after 2016 because there is no scientific data to support the conclusion that DHCMT M3 can remain in the body for 6 years or more, as suggested by Respondent.

129. In view of the scientific data presented by these experts, the Arbitrator is not persuaded by CEO Scott’s conclusion that “it is possible” for the DHCMT M3 to remain in the human body for six year or even for up to eight years after DHCMT enters the body.

130. One of the main reasons given by CEO Scott for this possibility is the limited data that exists about the outer limits of the time periods for the detection of DHCMT M3 in the urine. Specifically, CEO Scott noted it is simply unknown when an individual who ingested DHCMT will stop excreting the long-term metabolite DHCMT M3. Accordingly, CEO Scott posited it is possible that it remains sequestered in some part of the body for years. CEO Scott conceded he does not know where or how it may be sequestered in the body because he is not an expert in the field of pharmacokinetics. He based his conclusion on the absence of data related to the outer limits for the detection of the DHCMT M3.

131. In this regard, the Arbitrator considered Dr. Dalton pointed out the analysis of the outer bounds of the DHCMT M3 involves “a lot of guessing.” Moreover, the Arbitrator believes the claim that “it is possible” for the DHMCT M3 to remain in the body for six years or more simply based on what we do not know, borders on speculation.

132. Additionally, all of USADA’s experts questioned CEO Scott’s conclusion that DHCMT M3 “pulsates” by appearing, disappearing and re-appearing for an indefinite number of years. For example, Dr. Dalton and Dr. Eichner indicated the “re-appearance” of the DHCMT M3 in Athlete D after 13 months of testing negative, may be the result of new administration of the drug. The USADA’s experts indicated the data reviewed is insufficient to conclude the athletes did not administer a new dose during the time gap when they tested negative and then again positive.

133. [REDACTED]
[REDACTED]
[REDACTED]

134. [REDACTED]

136. In this case, Respondent’s positive test for DHCMT M3 involves a healthy athlete and an unknown source of the prohibited substance that resulted in the positive test for DHCMT M3.

[REDACTED]

137. For all the foregoing reasons, USADA demonstrated to the comfortable satisfaction of the Arbitrator the DHCMT M3 detected in Respondent’s urine in June 2022, was ingested after June 2016.

B. Respondent Failed to Establish by a Balance of Probability The ADRV Was Not Intentional.

138. Pursuant to Article 10.2.1 of the Code, for a proven anti-doping rule violation(s) of a non-specified substance, as in this case, the period of ineligibility is four (4) years unless the Athlete can establish by a balance of probability that the ADRV was not intentional.⁷⁹

139. In cases where the source of the prohibited substance is unknown, as in Respondent’s case, it is extremely difficult for the Athlete to demonstrate lack of intent.⁸⁰ In this respect, the Code explicitly indicates that while it is theoretically possible, “...it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving the Athlete acted unintentionally without establishing the source of the Prohibited Substance.”⁸¹

[REDACTED]

⁷⁹ C8, The Code.

⁸⁰ R13, *Villanueva v FINA*, CAS 2016/A/4534; R18, *Jack v. Swimming Australia & ASADA*, CAS A 1/2020

⁸¹ *Id.* at Comment to Article 10.1.1.

140. In *Villanueva*, a case where the source of the prohibited substance was also unknown, the Panel indicated the Code does not require for the Athlete to establish the source of the Prohibited Substance.⁸² Nonetheless, in *Villanueva* the Panel observed the difficulties involved in establishing lack of intent when the Athlete is unable to explain how the Prohibited Substance entered the body. Although the Panel in *Villanueva* concluded he failed to meet his burden to establish lack of intent, the Panel also indicated it is theoretically possible to establish lack of intent without identifying the source. Still, the *Villanueva* Panel described the possibility as “the narrowest of corridors” for the Athlete to pass in order to meet his or her burden.

141. Moreover, Arbitral precedent indicates there has to be some actual evidence of the possible source for the AAF of the prohibited substance. In essence, a determination of whether the anti-doping rule violation was intentional shall not be based solely on the Athlete’s denial of intent, suppositions or theories about the possible source of contamination.⁸³ For example, in *Bolkvadze* the Panel indicated that where the prohibited substance is unknown, and where the Athlete is unable to demonstrate how the substance entered his or her body, the Athlete must provide “actual evidence as opposed to speculation.”⁸⁴

142. In this case, the Arbitrator considered the credible record of Respondent’s good character and considered his good faith diligent efforts to identify the source. Nonetheless, there is absolutely no indication on this record of the possible source for the AAF of DHCMT M3 present Respondent’s samples. All experts, including Respondent’s expert, reviewed the lists of products, supplements and medicines provided by Respondent and determined nothing mentioned on his lists could have been the source for the presence of DHCMT M3. All matters mentioned by Respondent, including the food consumed while traveling, his vaccine history, the drink that he drank decades ago, were considered by the experts, and were all ruled out as possible sources by all experts.

143. Given these circumstances, the record is devoid of any evidence to explain how the source may have entered Respondent’s system and/or any concrete evidence about the possible source. As such, the only other factor left in support of Respondent’s denial or intent is the credible record of Respondent’s good character and his diligent efforts in identifying the source. This, the Arbitrator finds, is not sufficient to establish by the balance of probability Respondent’s proven anti-doping rule violation was not intentional.⁸⁵

⁸² R13, Id., R18, Id.

⁸³ C13, *FINA v. Bolkvadze*, CAS 2017/A/5392; C10, *USADA v. Blazejack*, AAA 01-16-0005-1873

⁸⁴ Id. at 11 citing In CAS 2014/A/3830

⁸⁵ The Arbitrator considered the determination in *Jack v. Swimming Australia*, wherein the Panel concluded based on the totality of the evidence that *Jack’s* credible testimony and evidence of good character was sufficient to establish the lack of intent. In this regard, the Arbitrator is mindful of the risks involved in determining lack of intent

144. Accordingly, there is no basis to reduce Respondent's ineligibility period to two years.

XIII. THE SANCTIONS FOR RESPONDENT PROVEN ANTI-DOPING RULE VIOLATIONS

145. Pursuant to Article 10.2.1.1 of the Code, the Arbitrator finds the period of ineligibility for the proven anti-doping rule violation by Respondent is four (4) years, beginning September 7, 2022, the date Respondent was suspended.

146. The Arbitrator finds Respondent failed to establish by the balance of probability the anti-doping rule violations were not intentional.

147. Pursuant to Article 9 and Article 10.10 of the Code, the Arbitrator finds any results obtained by Respondent on and after June 10, 2022, through the commencement of his provisional suspension on September 7, 2022, shall be disqualified.

based solely on those two factors without any reliable and credible indication of how the source entered the Athlete's system. In this case, there is absolutely no indication of a possible or a possible contaminant. Thus, the Arbitrator finds *Jack* is not applicable to the circumstances of this case.

XIV. AWARD

Having duly heard the evidence and the argument of the Parties, the Arbitrator awards as follows:

148. Respondent, Robert Scavilla, committed the anti-doping rule violations under Article 2.1 and 2.2 of the Code as alleged in the charge letter dated November 9, 2022.

149. Respondent failed to meet his burden to demonstrate the proven the anti-doping rules violations were not intentional. Therefore, there is no basis on this record to reduce the required period of ineligibility of four (4) years.

150. The appropriate sanction is a four-year period of ineligibility beginning September 7, 2022, the date Respondent was suspended.

151. The administrative fees of the American Arbitration Association shall be borne as incurred and the compensation of the arbitrator shall be borne as incurred.

152. This Award shall be the full and final resolution of all claims submitted in this Arbitration. All claims not expressly granted herein are denied.

Dated: March 10, 2023
Bronx, New York

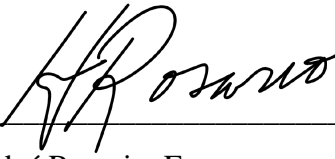


Haydeé Rosario, Esq.

AFFIRMATION

I, Haydee Rosario, Esq., being admitted to practice in the courts of New York, understand the penalties for perjury, and I affirm that this document is my Award, and the signature affixed below is mine.

Dated: March 10, 2023
Bronx, New York



Haydeé Rosario, Esq.