

**AMERICAN ARBITRATION ASSOCIATION  
COMMERCIAL ARBITRATION TRIBUNAL**

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In the Matter of Arbitration Between:

**United States Anti-Doping Agency,  
Claimant,**

**Case No.: 01-23-0002-9927**

v.

**Andre Luiz Novaes Porfirio,  
Respondent.**

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**FINAL AWARD OF ARBITRATOR**

**I. INTRODUCTION**

Pursuant to the American Arbitration Association’s (“AAA”) Commercial Arbitration Rules (“AAA Rules”) as modified by the Procedures for the Arbitration of Olympic & Paralympic Sport Doping Disputes (effective as revised January 1, 2023) (“Arbitration Procedures”) as contained in the U.S. Anti-Doping Agency’s (“USADA”) Protocol for Olympic & Paralympic Movement Testing (the “Protocol”), and World Anti-Doping Code (the “Code”) (collectively known as the “Applicable Rules”), an evidentiary hearing was held by videoconference on November 28, 2023, before the duly appointed arbitrator, Jeanne Charles (the “Arbitrator”).

This case arises from Respondent’s admissions to the use of exogenous testosterone and to the evasion of an in-competition sample collection attempt during the 2022 World International Brazilian Jiu-Jitsu No-Gi Championship on December 11, 2022 (the “Event”), in Anaheim, California, USA. Respondent is also accused of evading out-of-competition sample collection before cooperating on December 20, 2022, and of the presence of exogenous testosterone or its metabolites in his sample.

I, THE UNDERSIGNED ARBITRATOR, having been designated, and having been duly sworn, 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. United States Anti-Doping Agency (“USADA” or “Claimant”) is an independent anti-doping organization with headquarters in Colorado Springs, Colorado, USA. USADA has promulgated numerous anti-doping protocols, including the USADA Protocol for Olympic and Paralympic Movement Testing (the

“Protocol”). USADA conducted doping control at the Event under a contract with the International Brazilian Jiu Jitsu Federation (“IBJJF”).

2. Andre Luiz Novaes Porfirio (“Athlete” or “Respondent”) is a 26-year-old elite Brazilian Jiu-Jitsu (“BJJ”) athlete who fights in the heavyweight division. He is an accomplished athlete who has won four world titles in BJJ. Respondent has competed in BJJ events since 2020. Respondent did well at the 2022 World International Brazilian Jiu-Jitsu No-Gi Championship, advancing to the final fight in his division.
3. USADA was represented in this proceeding by Spencer Crowell, USADA Olympic & Paralympic Counsel and Jeff T. Cook, Esq., USADA General Counsel.
4. Respondent appeared *pro se*.
5. USADA and Respondent will be referred to collectively as the “Parties” and individually as a “Party.”

### **III. ISSUE**

6. While Respondent admitted to using testosterone and evading sample collection in an interview with a USADA investigator on March 20, 2023, he retracted his admission at the formal hearing. Respondent now disputes all three charges against him. Thus, the Arbitrator in this proceeding must determine whether Respondent committed the charged anti-doping rule violations (“ADRVs”) due to the presence of exogenous testosterone in his sample, the use/attempted use of exogenous testosterone, and the evasion of sample collection.
7. USADA requests the assessment of a four-year suspension beginning March 21, 2023, the date USADA provisionally suspended Respondent, and disqualification of competitive results on and after December 8, 2022, the approximate date Respondent used testosterone.

### **IV. JURISDICTION**

8. Respondent did not contest that this arbitration is governed, procedurally and substantively, by the Protocol as applicable to Respondent and his participation in the 2022 World International Brazilian Jiu-Jitsu No-Gi Championship on December 10-11, 2022. Respondent completed a waiver binding him to the Protocol upon registering for the Event.

9. Pursuant to the applicable arbitration procedures, which are contained in the USADA Protocol, the Arbitrator has the power to rule on her own jurisdiction.
10. No party has objected to the jurisdiction of the Arbitrator or asserted inarbitrability of the claim.
11. Accordingly, the Arbitrator finds this matter is properly before this Arbitrator.

## **V. PROCEDURAL HISTORY**

12. On March 21, 2023, Respondent was charged with the use and/or attempted use of an anabolic agent and with evading/refusing/failing to submit to sample collection.
13. On June 5, 2023, Respondent was additionally charged with the presence of exogenous testosterone and/or its precursors in his sample collected December 20, 2022.
14. This proceeding was initiated on June 30, 2023, pursuant to USADA's letter notifying the AAA of Respondent's request for a hearing.
15. By letter dated July 6, 2023, AAA appointed the Arbitrator in this case.
16. On August 2, 2023, the Arbitrator held a preliminary hearing with the Parties.
17. On August 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 date for November 28, 2023.
18. On October 3, 2023, USADA submitted its pre-hearing brief, its witness designation, exhibits list and exhibits to the Arbitrator and Respondent.
19. Respondent submitted no pre-hearing brief, witness designation, exhibits list, or exhibits.
20. On November 28, 2023, the Arbitrator held a full evidentiary hearing via video conference at which both USADA and Respondent were present and were given the opportunity to call witnesses and present evidence, examine and cross-examine witnesses and make arguments in support of their respective positions.

21. There was no court reporter as agreed upon by the Parties.
22. Without objection from Respondent, USADA called Respondent as its first witness during the presentation of its case. USADA also called Marina Giraldes, an IBJJF anti-doping official; Debbie Hausmaninger, the USADA Doping Control Officer (“DCO”) and Team Lead at the Event; John Loney, certified Doping Control Officer and Investigator; and Dr. Matthew Fedoruk, PhD, Chief Science Officer for USADA.
23. Respondent did not call any witnesses.
24. All witnesses testified under oath.
25. The Parties were provided an opportunity to present oral opening and closing statements, give arguments, and raise any issues or argument in support of their respective positions.
26. The Parties chose not to submit post-hearing briefs.
27. The hearing lasted approximately three (3) hours.
28. 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.
29. The Arbitrator declared the hearing closed on November 29, 2023.
30. This arbitration is governed, procedurally and substantively, by the Protocol and is applicable to Respondent pursuant to his signed waiver.

## **VI. APPLICABLE LAW**

### **A. The Athlete’s Responsibility**

31. The World Anti-Doping Code (“Code”) is incorporated into the USADA Protocol. The World Anti-Doping Agency (“WADA”) Prohibited List is also applicable in this matter. Pursuant to the WADA Prohibited List, testosterone and its precursors are classified as Anabolic Agents and are considered non-Specified Substances, which are prohibited at all times, in and out of competition.

32. Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) of the Code proscribes the presence of prohibited substances or their metabolites or markers in an Athlete's sample and applies a strict liability standard, meaning athletes are responsible regardless of fault or knowing use. It states, in relevant part:
- 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. (Emphasis in the original).
  - 2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: . . . where the Athlete's B Sample is analyzed and the analysis of the Athlete's B *Sample* confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the Athlete's A *Sample*. . . (Emphasis in the original).
33. Article 2.2 (Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method) of the Code proscribes the use or attempted use of prohibited substances and applies a strict liability standard, meaning athletes are responsible regardless of fault or knowing use. It states, in relevant part:
- 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 be demonstrated in order to establish an anti-doping rule violation for Use of a *Prohibited Substance* or a *Prohibited Method*.(Emphasis in the original).
  - 2.2.2 The success or failure of the *Use* or *Attempted Use* of a *Prohibited Substance* or *Prohibited Method* is not material. It is sufficient that the *Prohibited Substance* or *Prohibited Method* was *Used* or *Attempted* to be *Used* for an anti-doping rule violation to be committed. (Emphasis in the original).
34. Article 2.3 (Evading, Refusing or Failing to Submit to Sample Collection by an Athlete) of the Code proscribes "[e]vading *Sample* collection; or refusing or failing to submit to *Sample* collection without compelling justification after notification by a duly authorized *Person*." (Emphasis in the original). According

to the official Comment to Article 2.3 of the Code, failure to submit to Sample collection may be either intentional or negligent, while evasion or refusal of Sample collection is intentional.

#### B. Burden and Standard of Proof

35. Article 3.1 of the Code provides, in relevant part, that: “The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred.” Additionally, Article 3.1 of the Code indicates that:

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 specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability. (Emphasis in original).

36. Under Article 10.2.2 of the Code, the Athlete bears the burden of establishing by a balance of probabilities that ADRV was unintentional such that the penalty can be reduced.

#### C. Sanctions

37. USADA avers that Respondent admitted to intentional use of testosterone and therefore, in accordance with Article 10.2.1.1 of the Code, the appropriate period of ineligibility for his violations of Article 2.1 and Article 2.2 of the Code is four (4) years.
38. Where the maximum penalty for a violation of Article 2.3 is two (2) years, depending on the athlete’s degree of fault, USADA avers that the appropriate period of ineligibility in Respondent’s case is four (4) years, based on his violations of Article 2.1 and Article 2.2 of the Code. Article 10.9.3.1 of the Code dictates that “the sanction imposed shall be based on the violation that carries the more severe sanction . . . .”
39. Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation is covered in Article 10.10. It states:

In addition to the automatic *Disqualification* of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any *Provisional Suspension* or *Ineligibility* period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting *Consequences* including forfeiture of any medals, points and prizes. (Emphasis in original).

40. Pursuant to Article 10.13.2.1 of the Code, “if a Provisional Suspension is respected by the *Athlete* or other *Person*, then the *Athlete* or other *Person* shall receive a credit for such period of *Provisional Suspension* against any period of *Ineligibility* which may ultimately be imposed....” (Emphasis in original).
41. However, according to Article 10.13.2.3, no credit against a period of Ineligibility shall be given for any time period before the effective date of the Provisional Suspension or voluntary Provisional Suspension regardless of whether the Athlete elected not to compete or was suspended by a team.

## VII. BACKGROUND AND FACTUAL SUMMARY

42. Below is a summary of the relevant facts and allegations based on the Parties’ written and oral submissions, pleadings and evidence adduced during the pendency of this arbitration proceeding. Additional facts and allegations found in the Parties’ submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceeding, this Award only refers to the submissions and evidence necessary to explain the Arbitrator’s reasoning. The facts presented or relied upon may differ from one side’s or the other’s presented version and that is the result of the Arbitrator necessarily having to weigh the presented evidence in providing the basis for and in coming to a decision as to the award.

### A. Background/Uncontested Facts

43. Respondent is a 26-year-old athlete in the sport of Brazilian Jiu-Jitsu (“BJJ”). Respondent is a high-level BJJ competitor, and he fights in the heavyweight division.

44. On or around November 18, 2022, Respondent registered for the 2022 World International Brazilian Jiu Jitsu No-Gi Championship, to be held in Anaheim, California, USA with the final Event taking place on December 10-11, 2022.
45. Respondent participated in the Event on December 10, 2022, and December 11, 2022.
46. IBJJF is not a World Anti-Doping Code signatory. However, USADA conducted doping control at the Event pursuant to a contract with IBJJF. All athletes registering for the Event were required to complete a waiver agreeing to be bound by the Protocol. Respondent completed such a waiver.
47. USADA had only tested at the World International Brazilian Jiu Jitsu No-Gi Championship once previously, several years prior to 2022.
48. At the 2022 Event, USADA officials appeared in their USADA polo shirts, displaying their credentials and badges and circulating educational information. On December 11, 2022, USADA officials at the Event began openly notifying female athletes they had been selected for testing. Male athletes in Respondent's weight division were to be tested later that day, around 3:00 p.m.
49. Respondent won multiple fights at the Event, advancing to the final fight for his division. He was slated to fight his mentor, Vagner S. Rocha ("Rocha"), for the title.
50. On December 11, 2022, at the Event, a group of male athletes, including Respondent, gathered at the podium after USADA began testing athletes. Such a gathering was unusual.
51. USADA attempted to collect an in-competition sample from Respondent at the Event on December 11, 2022, but he could not be located by USADA officials or IBJJF personnel.
52. Neither Respondent nor Rocha appeared for the heavyweight final, and the match was called.
53. On December 20, 2020, a second attempt to collect a sample from Respondent began at approximately 7:00 a.m. The sample was ultimately collected by USADA DCO and Investigator John Loney ("Loney") at 2:00 p.m. that day after Respondent was initially unresponsive.
54. On January 18, 2023, USADA sent Respondent a letter alleging deliberate evasion of notification and/or sample collection on December 11, 2022. USADA



invited Respondent to submit an explanation regarding the allegations by January 27, 2023.

55. USADA conducted two (2) recorded interviews with Respondent. The first interview was held on February 22, 2023, and the second interview took place on March 20, 2023. During his first interview, Respondent stated that he departed the Event early because he wanted Rocha to have the title and because Respondent had to catch his flight back to his home in Miami, Florida, USA, in order to teach a class there on the morning of December 12, 2022. However, in his second interview, Respondent admitted that he had a friend inject him with 1 mL of testosterone cypionate approximately three (3) days prior to the Event and that he departed the Event early to avoid being tested by USADA.
56. In his March 20, 2023 interview, Respondent stated he conducted online research regarding the effects and dangers of testosterone. He acknowledged testosterone could help him in competition but stated he took it for the purpose of losing weight and looking good for the new year.
57. On March 20, 2023, Respondent further indicated that he had purchased testosterone cypionate from a friend at LA Fitness and had another friend inject 1 mL of the testosterone cypionate into his buttocks. He stated he purchased syringes for this purpose on Amazon.
58. During this interview, Respondent said he was warned by Victor Egoira (“Egoira”), a fellow member of his BJJ gym, on the second day of the event that he was going to be tested by USADA. Respondent stated Egoira asked if Respondent wanted to stay, fight, and be tested. Respondent indicated that because he had taken testosterone cypionate, he chose to leave to avoid being tested.
59. On March 21, 2023, USADA sent Respondent a letter notifying him that he was charged with ADRVs for the use of exogenous testosterone and for evading notification and/or sample collection on both December 11, 2022 and December 20, 2022. In that letter, USADA notified Respondent that it was also imposing a provisional suspension.
60. On April 19, 2023, USADA received the results of Gas Chromatography Carbon Isotope Ratio Mass Spectrometry (“IRMS”) performed on Respondent’s December 20, 2022 sample. The IRMS was performed by Sports Medicine Research & Testing Laboratory (“SMRTL”) in South Jordan, Utah. SMRTL is accredited by WADA and the American Association for Laboratory

Accreditation. SMRTL reported an atypical finding for the exogenous origin of testosterone and its metabolites.

61. On May 2, 2023, USADA sent Respondent a letter notifying him of SMRTL's IRMS findings. In this letter, USADA informed Respondent that it would pursue the atypical finding as an Adverse Analytical Finding ("AAF") based on his admitted use of testosterone cypionate. USADA further informed Respondent that he did not have a Therapeutic Use Exemption ("TUE") on file for testosterone. Because Respondent was not notified of an alleged ADRV prior to sample collection on December 20, 2022, USADA indicated it would combine this AAF with Respondent's pending case. USADA invited Respondent to request analysis of his B sample by May 9, 2023.
62. Respondent requested analysis of his B sample, which was performed by SMRTL. The results of the B sample analysis confirmed the A sample analysis finding of an atypical result for exogenous testosterone and its metabolites.
63. On June 5, 2023, USADA sent Respondent a letter charging him with a violation of Article 2.1 of the Code, in addition to his existing charges for violations of Articles 2.2 and Article 2.3 of the Code. In this letter, USADA also notified Respondent of his right to request a hearing before the AAA. Respondent was to request this hearing on or before June 15, 2023.
64. On June 26, 2023, USADA sent an email to Respondent's attorney at the time, Hector Acosta Carrillo ("Carrillo"), inquiring whether Respondent was requesting a hearing. Carrillo responded later that day indicating Respondent requested a hearing.

## B. Testimony

### *Claimant Witness Testimony*

65. The summary presented below reflects portions of the testimony presented by the witnesses deemed relevant by the Arbitrator.
66. Claimant called Respondent as its first witness. Incorporated is Respondent's testimony as provided during USADA's case in chief and his case in chief.
67. Respondent testified he is twenty-six years old.
68. Respondent testified he competed in a tournament in October or November of 2022, the winner of which received a \$50,000 prize. According to Respondent, he did not do as well as he expected in this tournament.

69. Respondent testified that after this tournament, he registered for the Event. He confirmed he registered on or around November 18, 2022, and agreed to be subject to the USADA rules. However, Respondent testified he did not know there would be testing at the event.
70. Respondent testified that sometime between November 18, 2022 and December 11, 2022, he purchased testosterone. However, he stated that he did not believe it would be helpful to him in the competition because it was injected three (3) days prior to the competition.
71. Respondent testified that he spoke to DCO and USADA Investigator Loney in order to get Loney to stop contacting him. Respondent acknowledged that he told Loney he had used one (1) mL of testosterone cypionate. However, Respondent testified this admission was a lie. Respondent testified that he was telling the truth at the formal hearing.
72. Respondent testified that he knows Egoira from their shared gym. Respondent testified that he did not participate in the Event's final match because he wanted to let his mentor, Rocha, win. In response to the inquiry that he could have come in second place at the Event, Respondent testified that he has multiple world titles, so second place would not mean anything to him. Respondent testified that it is customary in his sport for an athlete to allow a competitor to win if the athlete knows or cares about them.
73. Respondent testified that Rocha may have left the Event to avoid testing. Respondent testified Rocha is older and may have used testosterone to cover his use of other substances.
74. Claimant's second witness was Marina Giraldes ("Giraldes"), an IBJJF employee who coordinates the IBJJF anti-doping program and is part of its implementation. Giraldes testified she attended the Event. She testified that USADA had tested at this competition in the past, first in the Gi event and in 2022 at the No-Gi event. Giraldes testified she is familiar with Respondent, as he is a well-known BJJ athlete. She testified that she walked around the Event for three (3) days providing athletes with information about USADA and the Protocol. While Giraldes was not involved with determining the testing criteria for the Event, she testified she was familiar with the criteria.
75. Giraldes testified that Event finals started at approximately 1:00 p.m. on December 11, 2022. She further testified that the first athletes to have samples collected at the Event were the female finalists. She testified that while she could not recall the exact time of the first sample collection, as a heavyweight male, Respondent would not have had his sample collected until approximately 3:00 p.m. that day. When asked if she noticed anything odd while athletes were

being tested, Giraldes testified that approximately eight (8) to ten (10) athletes were tested before testing began on heavyweight males. She testified that this was a noticeable process, and male athletes—including Respondent—began to gather around the podium to see what USADA was doing. Giraldes testified that once Respondent and the other male athletes saw that testing was being conducted, they left the podium. Giraldes further testified that it was unusual for athletes to gather at the podium before their own finals.

76. Giraldes testified that Fight Sport, Respondent's BJJ gym, is a large academy that trains many athletes for competition. Giraldes testified that while no one from Fight Sport has told her they use exogenous testosterone, it is well known that Fight Sport Athletes use exogenous testosterone. She further testified that none of the athletes from Fight Sport could be located for their final fights, including Respondent.
77. Claimant's third witness was Debbie Hausmaninger, USADA Doping Control Officer and Team Lead ("Hausmaninger"). Hausmaninger testified she supervises twenty-two (22) other DCOs for out-of-competition testing, and she testified she attended the Event. Hausmaninger further testified there were four (4) DCOs at the event, including her, and she was the team lead. Hausmaninger testified she and her team were dressed in the USADA polo shirts, wearing their DCO credentials and badges. Hausmaninger testified there was USADA signage posted on chairs and at the Event testing stations. Finally, Hausmaninger testified she and her team were unable to collect a sample from Respondent on December 11, 2022.
78. Claimant's fourth witness was USADA Doping Control Officer and Investigator John Loney, who collected Respondent's sample on December 20, 2022, in Miami, Florida, USA. Loney testified there was a delay of about eight (8) hours in collecting Respondent's sample. Loney further testified he initially received no answers or text messages from Respondent upon trying to contact him. Loney testified that Respondent later informed him he had to handle life obligations and would deal with USADA later.
79. Loney testified that he conducted two (2) interviews with Respondent, one on February 22, 2023 and one on March 20, 2023. Loney testified that Respondent had a pleasant demeanor during these interviews.
80. According to Loney's testimony, on February 22, 2023, Respondent indicated he wanted to allow Rocha to win and wanted to catch his flight back to Miami, Florida, USA. However, Loney testified that Respondent provided him with an itinerary showing that Respondent's flight was on December 12, 2023.

81. Loney testified that on March 20, 2023, Respondent called him saying he felt bad and wanted to tell Loney the truth. Loney testified Respondent indicated he had prayed about the issue and that his parents did not raise him to behave dishonestly. Loney testified that during this interview, Respondent admitted to using testosterone three (3) days before the Event. Loney testified Respondent acknowledged this would help his performance at the Event. Loney testified that Respondent indicated he procured testosterone from a gym friend, Adolpho, and that he obtained syringes from Amazon. Loney further testified that Respondent described having someone else inject him with testosterone. Finally, Loney testified that Respondent admitted he did not compete in the Event finals because he saw USADA signs on chairs and discovered he was going to be tested.
82. Claimant's final witness was Matthew Fedoruk, Ph.D. ("Dr. Fedoruk"). Dr. Fedoruk holds a Ph.D. in Pathology and Laboratory Medicine from the University of British Columbia, in Vancouver, Canada. He is currently the Chief Science Officer, Science & Research, at USADA in Colorado Springs, Colorado, USA. He is considered an expert in toxicology and anti-doping programs. He has been received as an expert in prior anti-doping arbitrations.
83. Dr. Fedoruk testified that exogenous testosterone has been banned since athlete drug testing began. Testosterone is a non-specified substance. As an anabolic steroid, it is a precursor to other prohibited substances. Testosterone is a very prevalent doping agent, accounting for approximately forty (40) percent of adverse analytic findings. Testosterone is commonly abused because of its performance-enhancing effects, including stimulating muscle growth, increasing lean muscle mass, improving recovery, and enhancing endurance.
84. Through his testimony and report, Dr. Fedoruk conveyed that there were no departures from the testing standards in analyzing Respondent's sample. Respondent has no therapeutic use exception. Respondent's sample returned an atypical finding for exogenous testosterone. Dr. Fedoruk explained that the analysis was conducted using Gas Chromatography Carbon Isotope Ratio Mass Spectrometry, which allows the identification of naturally produced testosterone versus exogenous testosterone. According to Dr. Fedoruk, the results of Respondent's sample were reported as an atypical finding, which requires corroboration through investigation.

### ***Respondent Witness Testimony***

85. Respondent did not call any witnesses.

## VIII. ANALYSIS AND FINDINGS

### A. Respondent Committed the Anti-Doping Rule Violations Alleged in the Charge Letters Dated March 21, 2023 and June 5, 2023.

86. When tested, both Respondent's sample A and sample B showed atypical findings, consistent with the use of exogenous testosterone. Claimant brought forth this result as an Adverse Analytical finding, consistent with its investigation. During the course of Claimant's investigation, Respondent admitted to using testosterone in December 2022. This admission is supported by the results of the analysis of Respondent's sample using IRMS. As explained by Dr. Fedoruk, these results indicate the presence of exogenous testosterone and its metabolites in Respondent's sample. Testosterone is considered a Non-Specified Substance and is specifically listed as prohibited as a S1 anabolic agent on the WADA Prohibited List. Its use is prohibited at all times – in and out of competition. Therefore, Respondent committed an anti-doping rule violation as set forth in Article 2.1 (presence of a prohibited substance or its metabolites) of the Code.
87. While Claimant denied ever using exogenous testosterone at the formal hearing, he admitted in his March 20, 2023 interview that he used testosterone in December 2022 prior to the Event. Respondent's hearing testimony that he lied in his March 20, 2023 interview and did not use testosterone in December 2022 prior to the Event was unpersuasive. Claimant met its burden of showing that Respondent used testosterone. Testosterone is a prohibited substance at all times. Therefore, Respondent committed an anti-doping rule violation as set forth in Article 2.2 (use/attempted use) of the Code.
88. While Claimant denied evading testing at the formal hearing, he admitted to testing evasion in his March 20, 2023 interview. Respondent's testimony that he lied in his interview and did not evade testing on December 11, 2022, or December 20, 2022, was unpersuasive. Respondent did not provide a persuasive alternative explanation for his early departure from the Event. Claimant has met its burden of showing that Respondent intentionally left the Event early to avoid sample collection and that he further delayed sample collection when contacted by Loney on December 20, 2022. Therefore, Respondent committed two (2) anti-doping rule violations as set forth in Article 2.3 (evading/refusing/failing to submit to sample collection) of the Code.

### B. The Sanctions for Respondent's Proven Anti-Doping Rule Violations

#### 1. Default Period of Sanction

89. Pursuant to Article 10.2.1.1 of the Code, the default period of ineligibility for ADRVs under Articles 2.1 and 2.2 of the Code is four (4) years.
90. Pursuant to Article 10.2.2 of the Code, if an athlete can establish by a balance or probabilities that the ADRV under Article 2.1 or 2.2 of the Code was unintentional, the period of ineligibility is two (2) years.
91. Pursuant to Article 10.3.1 of the Code, the period of ineligibility for an ADRV under Article 2.3 of the Code is up to two (2) years, depending on the athlete's degree of fault.

## 2. Applicable Period of Sanction

92. According to Article 10.9.3.1 of the Code, "the sanction imposed shall be based on the violation that carries the more severe sanction . . . ."

## 3. Period of Ineligibility

93. Claimant argues that the appropriate period of ineligibility in this case is four (4) years.
94. Here, Respondent did not argue nor establish that any of his ADRVs were unintentional. Rather, Respondent, in his testimony denied committing any violation of Article 2.2 or 2.3 of the Code, and he raised no defense to the charge under Article 2.1 of the Code. Here, the longer default period of ineligibility is appropriate. That is, Respondent shall be assessed a 4-year suspension.
95. Claimant did not allege or demonstrate that Respondent failed to respect his provisional suspension. Therefore, Respondent's period of ineligibility shall run from March 21, 2023, pursuant to Article 10.13.2.1 of the Code.

## 4. Disqualification of Results

96. Article 10.10 of the Code is clear that results from the date a positive sample is collected, or other anti-doping rule violation occurred, through the commencement of any provisional suspension, be disqualified, unless "fairness requires otherwise." Thus, the issue before this Arbitrator is whether Respondent's results from December 8, 2022, the approximate date he used exogenous testosterone, should be disqualified.
97. In this case, Respondent admitted to using testosterone prior to the competition. He also admitted to intentionally evading sample collection at the Event. When Respondent was located on December 20, 2023, he delayed sample collection for several hours. When his sample was tested, it returned

an atypical finding consistent with his admission to exogenous testosterone use. Nevertheless, he retracted his admission at the formal hearing and denied using testosterone. Here, fairness does not dictate an exception to Article 10.10 is warranted. In fact, fairness dictates quite the opposite.

98. The Arbitrator finds that under the circumstances present in this case, Respondent's competitive results, including any award of medals, points, and prizes received from December 8, 2022 to March 21, 2023 shall be disqualified.

## **IX. AWARD**

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

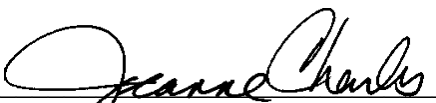
- A. Respondent has committed an anti-doping rule violation under Article 2.1 of the Code for presence of exogenous testosterone and/or its precursors in his sample.
- B. Respondent has committed an anti-doping rule violation under Article 2.2 of the Code for the use and/or attempted use of exogenous testosterone.
- C. Respondent has committed two (2) anti-doping rule violations under Article 2.3 of the Code for evading sample collection.
- D. As Respondent has committed multiple anti-doping rule violations, he is subject to the most severe applicable sanction, pursuant to Article 10.9.3.1 of the Code. Here, the most severe applicable sanctions are those for violations of Articles 2.2 and 2.3 of the Code.
- E. Respondent did not show that his anti-doping rule violations of Article 2.2 or 2.3 of the Code were unintentional under Article 10.2 of the Code. Therefore, the default period of ineligibility for violations of Articles 2.2 and 2.3 of the Code, four (4) years, is appropriate.
- F. The period of ineligibility shall start on March 21, 2023, the date Respondent's provisional suspension commenced. Pursuant to Article 10.13.2.1 of the Code, the period of provisional suspension beginning March 21, 2023, through the January 4, 2024 decision date served by Respondent shall be credited against the total period of ineligibility to be served.
- G. Respondent's competitive results, including any award of medals, points, and prizes, from the approximate date he used exogenous testosterone, December



8, 2022, to the first day of his provisional suspension, March 21, 2023, shall be disqualified.

- H. The administrative fees and expenses of the American Arbitration Association totaling \$6,250.00 shall be borne as incurred, and the compensation and expenses of the arbitrator totaling \$8,883.40 shall be borne as incurred.
- I. This Award is in full settlement of all claims submitted in this arbitration. All claims not expressly granted herein are hereby denied.

Dated: January 4, 2024  
Fort Lauderdale, FL

  
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Jeanne Charles, Esq.  
Arbitrator