

**AMERICAN ARBITRATION ASSOCIATION  
COMMERCIAL ARBITRATION TRIBUNAL**

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In the Matter of Arbitration Between:

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

**Case No.: 01-23-0000-4459**

v.

**Toccata Murphy,  
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 United States Olympic & Paralympic Committee National Anti-Doping Policy (“USOPC NADP”), the World Athletics Anti-Doping Rules, the United States Anti-Doping Agency Protocol (“ the Protocol”), and World Anti-Doping Code (the “Code”) (collectively known as the “Applicable Rules”), an evidentiary hearing was held by videoconference on June 2, 2023, before the duly appointed arbitrator, Jeanne Charles (“the Arbitrator”).

This case arises from Respondent’s use of dehydroepiandrosterone (“DHEA”) that she declared on her doping control form during an in-competition sample collection on July 29, 2022, at the 2022 USA Track and Field Masters Outdoor Championship in Lexington, Kentucky.

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 the independent anti-doping organization, as recognized by the United States Congress, for all Olympic, Paralympic, Pan American and Parapan American sport in the United States with headquarters in Colorado Springs, Colorado. USADA is authorized to execute a comprehensive national anti-doping

program encompassing testing, results management, education, and research, while also developing programs, policies, and procedures in each of those areas.

2. Toccata Murphy (“Athlete” or “Respondent”) is a 53-year-old American Masters track and field athlete who specializes in sprinting disciplines. She is an accomplished athlete and is ranked in the top five worldwide for her age group in the 200-meter and 400-meter disciplines. She has held a USA Track and Field (“USATF”) membership intermittently since 2010 and was most recently a member of USATF from February 2, 2022 through December 31, 2022. Respondent has competed in track and field events since 2009. In addition to ranking very highly in world rankings, she placed first in her age group at the 2022 USA Track and Field Masters Outdoor Championships where USADA collected the sample giving rise to this case. It was at this event that Respondent broke the American record in the 400-meter race for the women’s 50-54 age category.
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. Respondent does not dispute that she used DHEA which is prohibited at all times. Thus, the central issue before the Arbitrator in this proceeding is the appropriate sanction to be applied for the anti-doping rule violation (“ADRV”) due to Respondent’s use of DHEA. USADA concedes that Respondent can establish that she was not significantly at fault or negligent, based on the limited anti-doping education she has received and the fact that DHEA is available over the counter. However, the Arbitrator is nonetheless required to determine what degree of fault Respondent, as a Recreational Athlete, should be assessed for the ADRV within a range from 0-24 months.
7. USADA requests the assessment of a 16-month suspension beginning December 9, 2022, the date USADA provisionally suspended Respondent, and disqualification of competitive results on and after March 31, 2022, the date Respondent used DHEA.

### **III. JURISDICTION**

8. Respondent did not contest that this arbitration is governed, procedurally and substantively, by the USADA Protocol as applicable to Respondent and her participation in the 2022 USATF Masters Outdoor Championships on July 29, 2022.
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 an arbitrability of the claim.
11. Accordingly, the Arbitrator finds this matter is properly before this Arbitrator.

### **IV. PROCEDURAL HISTORY**

12. On January 20, 2023, Respondent was charged with use of DHEA and receiving an over-limit IV on July 26, 2022.
13. This proceeding was initiated on January 31, 2023, pursuant to USADA's letter notifying the AAA of Respondent's request for a hearing.
14. By letter dated February 28, 2023, AAA appointed the Arbitrator in this case.
15. On February 23, 2023, the Arbitrator held a preliminary hearing with the Parties.
16. On February 24, 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 May 1, 2023.
17. On March 21, 2023, USADA submitted its pre-hearing brief, its witness designation, exhibits list and exhibits to the Arbitrator and Respondent.
18. On April 7, USADA granted Respondent a retroactive Therapeutic Use Exemption ("TUE") in connection with her application dated December 20, 2022 for use of the over-limit IV on July 26, 2022 and reviewed by the TUE Committee on March 21, 2023.<sup>1</sup> As a result, USADA withdrew the ADRV

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<sup>1</sup> Respondent initially submitted the application on December 20, 2022. However, it was incomplete. Upon submitting a complete application, it was approved.

charge in connection with the July 26 IV use. Hence, the IV use is no longer subject to this proceeding and will not be addressed further.

19. By email dated April 13, 2023, Respondent requested a 3-week extension to submit her response brief which was originally due on April 20, 2023.
20. USADA was provided an opportunity to respond to Claimant's request. On April 14, 2023, USADA provided a proposed modified pre-hearing schedule with Respondent's brief due May 5, 2023; USADA's reply brief due May 26, 2023; and the hearing reset for June 2, 2023.
21. On April 14, 2023, the Arbitrator adopted the dates proposed by USADA and issued Scheduling Order No. 2.
22. On May 4, 2023, by email, Respondent requested that her case be dismissed and advised the Arbitrator the request will be contained in her pre-hearing brief.
23. On May 5, 2023, Respondent submitted her pre-hearing brief, supporting evidence and witness designation to the Arbitrator and the USADA.
24. On May 26, 2023, USADA filed a Motion in Limine seeking to exclude certain Respondent exhibits appearing to contain expert testimony without the declarants appearing as witnesses during the hearing. Additionally, the motion sought to exclude character letters for Andrew Kashak and Cynthia Smith Perkins.
25. On May 26, 2023, USADA also filed its reply brief along with additional exhibits.
26. On June 1, 2023, the Arbitrator ruled on the Motion in Limine denying it, in part. The Arbitrator ruled that Respondent would be allowed to enter her exhibits into the record and Claimant could argue what weight, if any, should be given to the evidence. The Arbitrator specifically ruled that the letters from the medical providers would not be accepted as expert testimony without their appearances at the hearing.
27. On June 2, 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.
28. There was no court reporter as agreed upon by the Parties.

29. Without objection from Respondent, USADA called Respondent as its first witness during the presentation of its case. USADA also called James Hill, USATF Associate Director of Information Technology and Dr. Laura Lewis, PhD, its Director of Science.
30. Respondent called Andrew Kaschak, Coach at the University of North Carolina; Tiffany Wright, former USATF Masters Member; Dr. Marcus Shute, PhD, a USATF Masters Track & Field Competitor; and India Bridgette, USATF Masters Member.
31. All witnesses testified under oath.
32. 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.
33. The Parties chose not to submit post-hearing briefs.
34. The hearing lasted one (1) day.
35. 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.
36. The Arbitrator declared the hearing closed on June 6, 2023, upon the receipt of USADA's closing PowerPoint document.
37. This arbitration is governed, procedurally and substantively, by the USADA Protocol and is applicable to Respondent as a member of USATF.

## **V. APPLICABLE LAW**

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

38. 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, DHEA is a non-Specified Substance which is prohibited at all times, in and out of competition.

39. Article 2.2 (Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method) of the Code proscribes the presence and 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).

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#### B. Burden and Standard of Proof

40. Article 3.1 of the Code provide, 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).

41. Under Article 10.6.2 of the Code, the Athlete bears the burden of establishing that he or she bears no significant fault or negligence with respect to the ADRV such that the penalty can be reduced.

### C. Sanctions

42. USADA concedes that because Respondent's use was not intentional, in accordance with Article 10.2.2 the maximum period of ineligibility is two (2) years.
43. Reduction of the period of ineligibility based on no significant fault or negligence may occur for Recreational Athletes. There is no dispute that Respondent was a Recreational Athlete.
44. Under Article 10.6.1.3 of the Code concerning Protected Persons or Recreational Athletes, it states:

Where the anti-doping rule violation not involving a Substance of Abuse is committed by a *Protected Person* or *Recreational Athlete*, and the *Protected Person* or *Recreational Athlete* can establish *No Significant Fault or Negligence*, then the period of *Ineligibility* shall be, at a minimum, a reprimand and no period of *Ineligibility*, and at a maximum, two (2) years *Ineligibility*, depending on the *Protected Person* or *Recreational Athlete's* degree of *Fault*. (Emphasis in original).

45. 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).

46. Pursuant to Article 10.13.2.1, "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).
47. 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.

48. The Appendix of the Code provides definitions helpful to the understanding of this case.
49. **Fault:** Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2.
50. **No Fault or Negligence:** The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.
51. **No Significant Fault or Negligence:** The Athlete or other Person's establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.

## VI. BACKGROUND AND FACTUAL SUMMARY

52. 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*

53. Respondent is a 53-year-old masters track and field athlete who specializes in sprinting disciplines. She has held a USATF membership intermittently since 2010 and was most recently a member of USATF from February 2, 2022 through December 31, 2022.
54. USADA collected an in-competition sample from Respondent on July 29, 2022 at the 2022 USATF Masters Outdoor Championships—a USATF sanctioned event, in Lexington, Kentucky.
55. Respondent raced in the Women's 50-54 200M and 400M sprints. Respondent won both races, breaking the 400M American record for her age group.
56. On the doping control form, Respondent declared thirty-one different supplements and medications.
57. On August 1, 2022, Respondent submitted a supplemental declaration via email where she declared twelve additional supplements including "DHEA last taken 7/27." DHEA is classified as a non-specified substance and prohibited at all times in and out of competition.
58. In the email, Respondent explained that she could not remember all of the supplements taken when she completed the doping control form at the race. Thus, she wanted to supplement her doping control form.
59. On September 20, 2022, USADA sent Respondent a letter notifying her that she had declared the use of DHEA, a prohibited anabolic agent, and requested that she provide further information regarding her use of the substance.
60. Respondent sent an explanation via email on October 4, 2022, where she explained that she purchased a DHEA supplement in March 2022 with the

goal of increasing her libido, which had decreased due to her reported hypothyroid condition.

61. Respondent further explained in the email that she discontinued use of the DHEA supplement in late March 2022 after having consumed a total of two pills when her doctor told her during an April 2, 2022 appointment that she probably didn't need the supplement.
62. In response to USADA's request to explain her hypothyroid condition, Respondent explained that she gets checked for the condition every three (3) months. The condition can lower any drive in her body from breathing to moving when the thyroid is not functioning correctly. Respondent believed she purchased it on or about March 24, 2022. Respondent provided a receipt to confirm when she believed the supplement containing the DHEA was purchased.
63. USADA conducted two (2) recorded interviews with Respondent. The first interview was October 20, 2022, and the second interview took place on October 27, 2022. Respondent was unable to explain why she declared last taking the DHEA supplement on July 27, 2022, if she believed she had taken it in March 2022 except to say that she "thought [she] took it sooner than [she] had taken it."<sup>2</sup>
64. Respondent further explained that before taking the supplement, she researched the safety of DHEA supplements for women, although she did not conduct any research on whether DHEA was a prohibited substance.
65. On October 28, 2022, Respondent provided a picture of the DHEA supplement that she used, and she provided medical documentation of her hypothyroidism diagnosis on November 14, 2022.
66. On December 9, 2022, USADA sent Respondent a letter notifying her that she had committed ADRVs for the use of DHEA. In that letter, USADA notified Respondent that it was also imposing a provisional suspension. On January 20, 2023, USADA charged Respondent with ADRVs for the use of DHEA pursuant to Article 2.2 of the Code.

## *B. Testimony*

### *Claimant Witness Testimony*

67. The summary presented below reflects portions of the testimony presented by the witnesses deemed relevant by the Arbitrator.

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<sup>2</sup> USADA's pre-hearing brief at 4.

68. Claimant called Respondent as its first witness. Incorporated is Respondent's testimony as provided during USADA's case in chief and her case in chief.
69. Respondent testified she first started track and field in 2009 and was ranked in the top five (5) internationally. For the last two (2) years, she has been an associate head coach for cross country and track at Johnson and Wales University - Charlotte. While she is responsible for training and guiding student athletes, they do not have an anti-doping protocol and she can turn to the NCAA if information is needed.
70. Respondent explained that she obtained the USATF membership so that her track club could participate in the meets. She has been an officer in the club since 2013.
71. With respect to having notice of the USADA Protocol and Code, Respondent testified that while she has renewed her membership each year since 2010, she checked the boxes on the electronic form agreeing to be subject to the rules, but did not access the hyperlinks to the USATF Bylaws and Operating Regulations, USATF Competition Rules, USATF SafeSport Handbook or the Anti-Doping Protocol.
72. Respondent testified that her understanding of the acceptances was that it meant she would be drug tested.
73. Respondent acknowledged that she is familiar with the USADA website but recalled accessing it last in 2011 when she went to the Masters World competition. She recalled the officials "hammering" into them how they would be drug tested, but she was not provided a list of prohibited substances.
74. Respondent testified that the 2022 competition was the last National competition in which she had competed since 2014.
75. Respondent testified further about the anti-doping education she received. Except for the information she received, most recently, her email inbox contained a USADA webinar invitation dated August 18, 2021. She explained that she did not open it until after reading the USADA's reply brief in this matter.
76. Respondent explained that at no time did she understand that she was required to attend the webinar.
77. Curious to see what type of education was given, she attended a training after these proceeding began.

78. Respondent presented testimony about what she considers the failure of the USATF rules to inform athletes like her who are not professional or elite athletes, yet enjoy competition, but are subjected to the same regulations as elite athletes.
79. Respondent acknowledged that while the rules should apply equally to athletes, one has to “dig down” into the internet websites to find it. Respondent emphasized that Masters level athletes should get the same information as the elite athletes since they are subject to the same rules.
80. Respondent noted that USATF Masters only recently added specific information about the Code and the USADA Anti-Doping Protocol to its website.
81. Respondent went on to testify about her health conditions. Since 2013 she has been fighting a muscular disease. Respondent has Rhabdomyolysis which is a rare muscle injury where the muscles disintegrate allowing the toxic components of muscle fibers to enter the circulation system and kidneys. It is a life-threatening condition that can happen after an injury or excessive exercise without rest.<sup>3</sup>
82. Respondent has also been diagnosed with hyperthyroidism. Hypothyroidism is when the thyroid gland does not make enough of the thyroid hormone called thyroxin (T4). This causes the body’s system to slow down and can lead to symptoms like fatigue, feeling cold, weight gain due to fluid retention, dry skin and hair loss.<sup>4</sup>
83. According to Respondent’s lab test results, in March 2020, her Creatine Kinase (“CK”) level, used to assess the effects of rhabdomyolysis, was 1,088 where the standard range is 30-375. On June 8, 2022, the level was 641 and Respondent did not return to within normal range until February 2023.<sup>5</sup>
84. The normal range for the Thyroid-Stimulating Hormone (“TSH”) is from 0.450-5.330. TSH measures the functioning of the thyroid. Respondent’s TSH level on March 18, 2022 was 5.720. On June 8, 2022, it was 27.968 and did not return to within normal range until November 4, 2022.<sup>6</sup>
85. Respondent testified that from March through June 2022 Respondent was dealing with the symptoms of her conditions. During this time, she had very

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<sup>3</sup> Respondent Exhibit 18.

<sup>4</sup> Respondent Exhibit 19.

<sup>5</sup> Respondent Exhibit 4.

<sup>6</sup> Respondent Exhibit 5.

high brain fog and her speech was starting to slow down. In addition, her libido and other drives were low. She explained that she must stay out of the sun because she dehydrates quickly. Respondent explained that she signed up as a USATF member, but she did not think she was going to be prepared to compete.

86. Respondent explained further that she was not thinking of competition because she had not competed in six (6) years. She was not thinking as an athlete but as a sick person when she purchased the supplements containing the DHEA on or about March 26, 2022.
87. Respondent saw her doctor on April 2, 2022, because she had been feeling very lethargic. She asked him about the efficacy of the DHEA supplements and was advised that it would not help her. Based on this advice, she stopped taking the supplements.
88. In her mind the supplements were “clean” because the store markets itself that way. The research she conducted on the DHEA supplement was for the purpose of seeking medical help for what was going on with her health conditions. She stated that she did not even think of going to the USDA website.
89. Respondent continued to seek alternative methods for addressing her symptoms including Dr. Estro supplements and taking B12 complex at a lab.
90. With respect to her disclosure on the form at the race on July 29, 2022, she testified that she was mistaken by indicating that she last took DHEA on July 27, 2022.
91. Respondent stated that because she is a clean eater, she took a number of supplements before she traveled to the race.
92. The Respondent was concerned about this case being a reflection on her character, which is extremely important to her and noted that these cases are not discussed among athletes because it is embarrassing for the athlete.
93. She explained that she is a former police officer and knows how important it is to be truthful. While accepting responsibility for making an error in not researching the DHEA supplements more thoroughly, Respondent testified that she had no intention of trying to cheat.
94. Claimant’s second witness was James Hill (“Hill”), USATF Associate Director of Information Technology. Hill testified that he manages the website and registrations. Hill confirmed that an email was sent to all Masters athletes including Respondent on August 18, 2021 for a webinar to be held on August

25, 2021. Hill testified that on May 31, 2023 at 1:56 pm he verified that the email was opened although he could not confirm when Respondent opened it.

95. Claimant's final witness was Laura Lewis, PhD ("Dr. Lewis"). Dr. Lewis holds a Ph.D. in Exercise Physiology from Flinders University, Adelaide, Australia. She is currently the Director of Science & Research at USADA in Colorado Springs, CO. She is considered an expert in the scientific aspects of doping control and has reviewed over a hundred results management cases while at USADA. She has been received as an expert in prior anti-doping arbitrations.
96. Dr. Lewis testified that she works with the legal and education teams to help promote the science behind the education provided to athletes. Her office manages Global Reference Online where athletes can search brand names, their sport, and various ingredients. DHEA is clearly prohibited. If there are questions, there is a drug reference line or email.
97. Through her testimony and report, Dr. Lewis conveyed that DHEA is an androgen (a male sex hormone) and precursor of steroid biosynthesis and is readily interconverted to its 3 $\beta$ sulfate form (DHEAS). In blood, DHEA circulates both in its free and sulfate forms but is converted to DHEA in target tissues. Approximately 80% DHEA and up to 95% DHEAS originate in the adrenal glands. The body produces 15 to 30 mg of DHEA/S per day making them by far the most abundant sex-hormone precursors found in human serum.<sup>7</sup>
98. DHEA is ingested orally. The DHEA content in dietary supplements varies considerably, but generally is in the range of 25 to 200 mg/dose.
99. Based on the photo provide by Respondent, the product Supplement Facts label clearly lists dehydroepiandrosterone (DHEA), and states, "supports graceful aging" and "promotes sex hormones." However, the product also carries a warning statement that these statements have not been evaluated by the FDA, and this product is not intended to diagnose, treat, cure, or prevent any disease.
100. In a study by Bhasin et al. (1996), it was proven beyond doubt that treatment with testosterone in supraphysiological doses increases muscle size and strength, and that with exercise these effects are augmented. Subsequent work showed that increases in fat-free mass, muscle size, strength and power are highly dose-dependent and correlated with serum testosterone concentrations (Bhasin et al., 2001; Woodhouse et al., 2003).<sup>8</sup>

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<sup>7</sup> Claimant Exhibit 34.

<sup>8</sup> *Id.* at 2.

101. The only approval of its use is through a prescription in a specific medication. DHEA has been on the WADA Prohibited List since 2003. DHEA has been banned in sport by the IOC, before WADA, since 1997.
102. DHEA is unique in the US as it is one of the only anabolic steroid precursors that is not banned by the Anabolic Steroid Control Act and can be legally sold in the United States as an over the counter “dietary supplement” which makes it relatively easy to purchase.
103. When questioned by Respondent what effect would two pills have, Dr. Lewis stated it would depend on the individual, but is hard for her to say what the effect would be.

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

104. The testimony of Respondent and her witnesses collectively was that the Masters events are about fun, exercise, recreation and camaraderie more than just competition.
105. Andrew Kaschak (“Kaschak”) is a track and field Coach for the Charlotte Track Club and has coached at the University of North Carolina - Charlotte for fifteen years. He has coached Respondent for eleven years at the Masters level. Kaschak testified that Respondent has always been very talented with a lot of athletic ability. However, she has had health challenges due to the rhabdomyolysis and aging. He stated that at times, Respondent can feel run down for weeks and performance during practice is about 50/50. Kaschak confirmed that Respondent has not qualified for national competition in six (6) years. On cross examinations he acknowledged that if she had come to him about taking the DHEA supplement, he would not have advised her to take it because it would not help her condition.
106. Respondent’s second witness was Tiffany Wright (“Wright”). Wright ran Masters level track with USATF from 2006-2007. She testified that she received no anti-doping education through USATF and had not heard of USADA until this proceeding. Wright stated she competed at Worlds in 2007 and learned more about drug testing at that level. Wright agreed that rules should be apply equally to athletes, though the information she received from USATF was lacking. What information she received came from a teammate.
107. Respondent’s third witness was Marcus Shute, PhD (“Dr. Shute”). Dr. Shute has competed for twenty years as a sprinter in several USATF Master National and World events. Dr. Shute testified that in his experience, he could not recall

receiving any anti-doping information until recently through webinars. Dr. Shute testified that information on prohibited drugs is not readily accessible which is an issue for older athletes who are prescribed medications that may be problematic for athletes. Once information is found, it is confusing, especially at the Masters level. He explained that recently, a friend directed him to USADA. USADA was responsive which impressed him. He could not recall what was on the USATF registration form the last time he registered but recalled he had to check boxes before making payment.

108. Respondent's final witness was India Bridgette ("Bridgette"). Bridgette is a USATF Masters member who competes as a sprinter in the 60-64 age group. Bridgette testified that she has been running all her life and was a Judge Advocate General (JAG) officer for six (6) years in the Marines. In 2020 she joined USATF and ran her first meet in 2021. Initially, she received no drug education for the Masters level and only became aware of drug protocols once she was drug tested after breaking a record in New York City. She tested positive for hydrochlorot (a diuretic) which has been prescribed for high blood pressure. It was during that episode that she learned about TUE. Bridgette testified further that if presented with a drug education document for Olympic and Paralympic competitions, she would not think it applied to her. Under questioning by USADA, Bridgette stated that the anti-doping training should be mandatory like Olympic athletes. She was not aware of Sports 380 webinars. In her view, most athletes think cheating is taking steroids.

## VII. ANALYSIS AND FINDINGS

### A. Respondent Committed the Anti-Doping Rule Violations Alleged in the Charge Letter Dated January 20, 2023.

109. While Claimant argues that this case should be dismissed given the circumstances of her use of DHEA, she does not dispute that she used it. DHEA 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 2.2 (use/attempted use) of the Code and her request for dismissal is denied.



B. Respondent Met Her Burden to Demonstrate the Violation Was Not Intentional and That There Was No Significant Fault or Negligence on Her Part.

110. Claimant concedes that Respondent can establish she was not significantly at fault or negligent, based on the limited anti-doping education she has received and the fact that DHEA is available over the counter. Therefore, Respondent's burden of demonstrating the use was unintentional and there was no significant fault or negligence on her part has been met.

C. The Sanctions for Respondent's Proven Anti-Doping Rule Violation

1. Default Period of Sanction

111. Pursuant to Article 10.6.2 of the Code, once an athlete has established that an offense was unintentional and that they did not have significant fault or negligence, the arbitrator must determine what sanction to impose within the applicable range. Typically, the minimum sanction for a non-specified substance is one (1) year, meaning the applicable range would be 12-24 months.
112. However, pursuant to Article 10.6.1.3, an exception to the one-year minimum sanction exists for Recreational Athletes, like Respondent. Therefore, the appropriate range to consider here is 0-24 months. Claimant asserts that Respondent's circumstances do not justify a significant reduction based on a degree of fault analysis and a 16-month period of ineligibility is appropriate. Respondent argues a 16-month penalty is too severe and does not fit the offense.

2. Degree of Fault Analysis

113. In *Cilic v. ITF*, a 2013 case from the Court of Arbitration for Sport ("CAS"),<sup>9</sup> (hereinafter "*Cilic*") provides the widely accepted framework for determining an athlete's degree of fault within a 24-month range. The *Cilic* Panel recognized three (3) degrees of fault: considerable (16-24 months), normal (8-16 months), and light (0-8 months). The Panel instructed that "in order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault."<sup>10</sup>

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<sup>9</sup> CAS is the worldwide appellate arbitration body for anti-doping disputes. Although no case provides binding precedent, CAS cases generally carry more weight than first instance decisions.

<sup>10</sup> *Cilic v. ITF*, CAS 2013/A/2237 (2014) ¶ 1.

*a. Objective Level of Fault Defined*

114. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. An athlete can be reasonably expected to follow all of the following steps: (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product, in the following circumstances: (a) for substances that are prohibited at all times (both in and out-of-competition), because these products are particularly likely to distort competition, and (b) for substances prohibited in-competition only, when the prohibited substance is taken by the athlete in-competition.<sup>11</sup>

*b. Subjective Level of Fault Defined*

115. Matters to be taken into account in determining the level of subjective fault include: an athlete's youth and/or inexperience; language or environmental problems encountered by the athlete; the extent of anti-doping education received by the athlete (or the extent of anti-doping education which was reasonably accessible by the athlete); any other "personal impairments" such as those suffered by (i) an athlete who has taken a certain product over a long period of time without incident; (ii) an athlete who has previously checked the product's ingredients; (iii) an athlete who is suffering from a high degree of stress; (iv) an athlete whose level of awareness has been reduced by a careless but understandable mistake.<sup>12</sup>
116. The *Cilic* Panel analyzed both the objective and subjective fault of the athlete but put an emphasis on the objective standard to determine in which category a case must fall. The Panel stated that the objective standard should be used to move an athlete between the three categories, and the subjective element should be used to move an athlete up and down within the category.<sup>13</sup> Only in exceptional circumstances could subjective elements warrant movement between the categories.<sup>14</sup>

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<sup>11</sup> *Id.* ¶ 74-75.

<sup>12</sup> *Id.* ¶ 76.

<sup>13</sup> *Id.* ¶ 71-73.

<sup>14</sup> *Id.* ¶ 74.

*c. Respondent's Level of Objective Fault*

117. In this case, to determine into which category of fault Respondent falls, first the objective elements will be considered. Then the subjective elements will be used to move the period of ineligibility up or down within the objective category.
118. Claimant argues Respondent did not attempt any of the standard of care responsibilities set forth in *Cilic*. Although she briefly researched the safety of DHEA supplements for women, this was unrelated to the anti-doping rules she was obligated to follow. A reasonable person in Respondent's situation, a highly experienced and accomplished masters-level athlete who had recently been advised that they are subject to the applicable anti-doping rules, would have conducted research before consuming an anabolic agent and competing in a sanctioned competition, Claimant argues.
119. Claimant also argues that the *Cilic* Panel specifically noted that arbitration panels should consider not only the formal anti-doping education an athlete has received but also the anti-doping education "reasonably accessible by the athlete."<sup>15</sup> Claimant contends that Respondent could have and should have consulted the rules after being warned that she was subject to the Protocol when she last renewed her USATF membership on February 2, 2022. Taking an anabolic agent, a substance prohibited at all times and particularly likely to distort competition, places Respondent in the highest fault category of 16-24 months since she failed to engage in any of the required due diligence.
120. Respondent contends that USATF provides Masters Athletes with little, if any, meaningful educational information regarding banned substances and/or drug protocols and testing. She argues that despite competing at a high level as a Masters Athlete for nearly fifteen years, Respondent became educated on the World Anti-Doping Codes only as a result of going through this charging process. However, she acknowledges that she should have done more to research the supplement and accepts responsibility.
121. Respondent explained that when agreeing to the rules during the USATF membership registration process, she thought it meant she would be drug tested. Because of embarrassment, athletes don't talk about these challenging situations. Respondent emphasizes that anti-doping education should be mandatory to fairly hold athletes accountable.
122. The standard of care is what could have been expected from a reasonable person in the athlete's situation. While the Arbitrator agrees there was a wealth of information accessible to Respondent at the time she purchased and

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<sup>15</sup> *Id.* ¶ 76.

took the prohibited substance, a review of the *Cilic* case and others submitted by the Claimant are premised on the fact that the athlete has received anti-doping education sufficient to create the presence of mind to cross-check the ingredients in a supplement with the list of prohibited substances.

123. Here, Respondent's anti-doping education was so lacking that she was not aware that she needed to take a deeper dive into researching the supplement for anti-doping purposes. It is true that education was offered through an email entitled "USADA Masters Webinar" sent to Respondent on August 18, 2021. However, Respondent was merely "invited to take part" in a USADA webinar. The email does not convey a message sufficient to put the athlete on adequate notice that the athlete has a specific duty of care requiring the due diligence expected when taking any substance.
124. Respondent testified credibly that she knew she would be drug tested but believed that to mean she should not take steroids. However, it is clear that she was not aware that an anabolic agent could be present in an over-the-counter item purchased at a supplement store marketed as a "clean" store. Thus, the degree of risk she perceived as a recreational athlete in connection with her duty of care was low to non-existent. Given these factors, Respondent's actions amount to an error in judgment that places the Athlete in the normal degree of fault category.

*d. Respondent's Level of Subjective Fault*

125. USADA argues that Respondent's level of subjective fault is relatively low within the highest degree of fault category. As referenced above, the Arbitrator disagrees that Respondent is within the highest degree of fault category. Nevertheless, USADA acknowledges that although Respondent was warned about the Protocol and applicable anti-doping rules when she purchased her USATF membership on February 2, 2022, she did not receive any formal anti-doping education from either USADA or USATF. USADA also recognizes that Respondent was forthcoming in declaring her use of DHEA as part of the sample collection process and purchased DHEA over the counter to treat a non-sport-related issue during a stressful time in her life.
126. Respondent argues that because she took only two (2) DHEA pills at a time when she was attempting to address serious health issues unrelated to her track participation and did not, in fact, gain any advantage-as evidenced by a negative drug test, the charge should be entirely dismissed. Respondent asserts that at the time she did not think she was going to compete given her

health issues and she was thinking as a sick woman, not as an athlete. Respondent argues that to hold her to 2011 education, is “laughable.”

127. In this case, the Arbitrator notes the following mitigating factors in favor of Respondent:

a. At the time Respondent purchased and took the DHEA, she was experiencing personal impairments related to her significantly elevated CK and TSH levels due to her rhabdomyolysis and hypothyroidism, respectively.

b. The DHEA use was brief and minimal. Respondent took two (2) pills and ceased taking them when her physician advised it would not help her condition.

c. Respondent tested negative at the time of competition which distinguishes her case from those relied upon by Claimant. In *USADA v. Pizza, a 2015 AAA case*, the athlete failed to disclose his use of testosterone *and* tested positive at the time of competition.<sup>16</sup> The *Pizza* Panel found the lack of education insufficient to reduce the athlete’s category of fault because “any reasonable person” knows that the use of testosterone raises anti-doping issues. This is not true of Respondent’s case. The name DHEA as a supplement purchased over the counter would not necessarily trigger the same warning for any reasonable person. The fact that Respondent reported it in a supplemental disclosure email after returning home from competition supports the idea that she perceived no such warning or if she did, she did not seek to conceal it.

d. Likewise, in *USADA v. Barnwell*, a 2010 case, a 52-year-old experienced Masters-level track and field athlete tested positive in competitive for a testosterone prohormone consistent with an injection or repeated or multiple oral ingestion.<sup>17</sup> The athlete was a former Olympian from his home country of Guyana yet participated in USA team and World Master events. The crux of Barnwell’s defense was not that he lacked knowledge of anti-doping rules, but that he was sabotaged by unknown persons. The Panel concluded he was not entitled to a reduction of the two-year penalty because he could not explain how the substance entered his body as required by the WAD Code. Here, Respondent

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<sup>16</sup> *USADA v. Pizza*, AAA No. 01-15-0006-1251 (2016).

<sup>17</sup> *USADA v. Barnwell*, AAA No. 77-190-514-09 (2010).

did not test positive in competition, had no formal anti-doping education and was forthcoming in her disclosures.

128. While Respondent's mistake was careless, it was understandable given her lack of anti-doping education and personal stress related to her health conditions. It is concluded that Respondent's error was careless but not highly careless given the totality of the circumstances and is a basis for reducing the Athlete's subjective capacity to act according to the required standards.

#### D. Period of Ineligibility

129. USADA argues that the factors present in this case support a sanction at the low end of the 16 to 24-month fault category (considerable degree of fault). Respondent while willing to accept responsibility for the ADRV, argues that the penalty is "highly punitive" given her honesty. The Arbitrator finds that the mitigating factors in this case carry significant weight. It is therefore concluded that this is a "standard" case of normal degree of fault.
130. A normal degree of fault dictates a period of ineligibility from 8-16 months. In considering where in the range of an 8 to 16-month suspension the Athlete should land, after considering the degree of the Athlete's fault here and the reasoning set forth in *Cilic* attributing a lower degree of fault to the professional athlete who had significant anti-doping education in that case, the principle of proportionality dictates that the appropriate amount of time in this case is situated at lower end of the range. That is, Respondent shall be assessed an 8-month suspension.

#### E. Disqualification of Results

131. Article 10.10 is clear that results from the date a positive sample is collected, or other antidoping 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 July 29, 2022 results should remain and not be disqualified, based on a finding of "fairness" under the circumstances of this case. Since this determination must necessarily vary on a case-by-case basis, different outcomes may result in other cases.
132. In this case, Respondent tested negative at the time of competition on July 29, 2022. Her use of the prohibited substance was brief in that she took two (2) pills several months prior to competition.

133. While Respondent disclosed that the prohibited substance was taken two (2) days prior to the competition, the weight of the evidence convinces the Arbitrator otherwise. Significantly, Respondent tested negative for the substance while in competition. Additionally, Respondent explained that in an abundance of caution, she listed everything that she could have ingested within the 90-day period prior to competing, acknowledging that she takes many supplements and wanted to be truthful in her disclosure. Furthermore, special consideration is given to the fact that Respondent was impaired due to her hypothyroidism and rhabdomyolysis and seeking relief for the symptoms in connection with those conditions which was a purpose unrelated to sport performance.
134. The record reflects that Respondent has been forthright, transparent and honorable in her participation in the investigation; respect of the suspension imposed and representations before this Arbitrator. But for her self-initiated supplemental disclosure of the DHEA supplement, the use would have gone undetected. As stated in the Code, it “has been drafted giving consideration to the principles of proportionality and human rights.”<sup>18</sup> Based on these considerations, the Arbitrator finds that under the circumstances present in this case, “fairness” and proportionality require that Respondent’s competitive results, including any award of medals, points, and prizes on or after July 29, 2022, to the day prior to imposition of her provisional suspension on December 9, 2022, shall be maintained and not be disqualified.

## VIII. 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 2.2 of the Code for use of a prohibited substance.
- B. Respondent did not intentionally violate the anti-doping rules under Article 10.2 of the Code and therefore the default or starting period of ineligibility for the anti-doping rule violation is two (2) years, which is subject to further possible reduction.
- C. Respondent has sustained her burden of proof under Article 10.6.1.3 (Protected Persons or Recreational Athletes) of the Code that she was not significantly at fault or negligent. Therefore, she qualifies for a reduction in

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<sup>18</sup> Code at 10.

her period of ineligibility. Respondent's period of ineligibility shall be eight (8) months.

- E. Pursuant to Article 10.13.2.1 of the Code, the period of provisional suspension December 9, 2022 until July 6, 2023, served by Respondent shall be credited against the total period of ineligibility to be served.
- E. Respondent's competitive results, including any award of medals, points, and prizes, from the day of her disclosure on July 29, 2022 through the day prior to her provisional suspension on December 9, 2022, shall be maintained.
- F. This Award is in full settlement of all claims submitted in this arbitration. All claims not expressly granted herein are hereby denied.

Dated: July 6, 2023  
Fort Lauderdale, FL

A handwritten signature in black ink, reading "Jeanne Charles", is written over a horizontal line. The signature is enclosed in a thin black rectangular border.

Jeanne Charles, Esq.  
Arbitrator