

## Response to WADA's Flawed FAQ Document

WADA's doubling down on half-truths and self-serving rationalizations for failing to enforce its own rules is deeply concerning, and those who value fair play remain completely unsatisfied by the answers being provided by WADA regarding its sweeping of 23 positive tests under the carpet. How much longer must we watch WADA dance around the truth, avoiding all accountability and responsibility?

We echo athletes' demands to create a truly independent investigation and let impartial experts and stakeholders participate in the process. We must get real answers, ensure accountability for any failures, and secure true reform at WADA to fulfill the promise we all have to clean athletes and the fairness of sport.

Below, please find responses to WADA FAQs published on April 29.

### WADA FACTS

WADA: Between 1 and 3 January 2021, the China Anti-Doping Agency (CHINADA) collected 60 urine samples of Chinese swimmers at a national swimming meet. There were 201 swimmers competing. The event was not a qualifying event for the Olympic Games.

In this national swimming competition, there were Chinese swimmers who lost out to those athletes who tested positive and have not received their rightful placements, due to WADA's failure to enforce its own rules regarding mandatory disqualification.

WADA: After certain delays due to the COVID-19 pandemic, the samples were reported into WADA's Anti-Doping Administration and Management System (ADAMS) by the WADA-accredited laboratory on or around 15 March 2021. There were 28 Adverse Analytical Findings (AAFs) for the prohibited substance, trimetazidine (TMZ), involving 23 different swimmers, which means that a small number of them tested positive more than once.

In early April 2021, CHINADA informed WADA that it had initiated an investigation, involving the public health authorities, into the source of TMZ found in the samples. There were strong indicators that these cases could be a case of group contamination considering the following factors:

WADA confirms that CHINADA did not initiate its investigation for over two weeks after the laboratory reported the positive tests, during which no notice to the athletes or provisional suspension was imposed as required by the rules.

If the investigation by CHINADA and the "public health authorities" did not begin until April, swabs of the kitchen facilities would not have been taken for over three months from the date of the positive tests.

All of the below indicators could be applied to the tail end of excretion after intentional use. From a scientific perspective, they do not provide strong evidence one way or the other in terms of contamination vs intentional doping.

- There were 23 swimmers, and 28 positive samples. All tested positive at the same time for TMZ at consistently very low levels (pg or low ng/mL range).

This only confirms there were 23 swimmers all with low levels of TMZ, indicating that they were exposed to a similar dose at a similar time. This does not point more towards contamination vs tail end excretion.

Valieva also tested positive in the low ng/mL range.

- The swimmers were from different regions of China, with different coaches and from different swimming clubs.

Exposure in different regions via systemic doping is just as possible as exposure at the hotel.

- The swimmers were in the same place at the same time when the positive samples arose.

The athletes were at the hotel for a swim meet and all tested during the multi-day event, and it is not confirmed where they were training or otherwise before arriving at the hotel. If part of a coordinated doping regime, they were all preparing for the same event.

- A number of these swimmers were tested on multiple occasions during the swim meet. Some of them were tested on two or even three occasions on consecutive days. For several swimmers, the results varied from negative to positive within a few hours, which is not compatible with a doping scenario of deliberate ingestion nor with micro-dosing.

There has been no evidence produced to show this is not compatible with deliberate ingestion in previous weeks or micro-dosing. At some point after ingesting TMZ, the tail end of excretion will be very close to the laboratory's limit of detection. Depending on the hydration status of the athlete and the specific gravity of the samples, very low levels may or may not be detected in subsequent samples. Anti-Doping organizations have seen this with other substances. Again, WADA provides no evidence to document the claim that this is not compatible with intentional doping, and such evidence could have been uncovered if it had initiated its own investigation into the source of the positive tests.

- Some of the competing swimmers stayed in at least one other hotel. Three of those athletes were tested and none tested positive for TMZ.

ARD reported that only one local team stayed at a different hotel, while 186 of the 201 participating athletes stayed at the same hotel. However, not every athlete who was staying at the hotel in question tested positive. Why not? WADA cannot answer this question because WADA did not

investigate the source of the positive tests; WADA does not know how the athletes ingested TMZ from the kitchen; and WADA does not know how TMZ got into the kitchen in the first place.

WADA: Between January and June 2021 there were no international swimming competitions scheduled. Therefore, these athletes did not participate in any such competitions during that time period.

WADA fails to mention that, according to ARD, China's Olympic Trials occurred during this time period between January and June 2021. If the athletes had been provisionally suspended as required under the rules, the 13 swimmers who qualified for the Olympics at China's Olympic Trials would not have participated, unless they established to a hearing panel that their positives were likely caused by a Contaminated Product. A Contaminated Product is a defined term in WADA's rules and does not necessarily include environmental contamination because it requires establishing that there was a product.

WADA: On June 15, 2021, WADA was notified of the decision by CHINADA to accept that 23 swimmers had tested positive in early 2021 for TMZ, after inadvertently being exposed to the substance through food/environment contamination as a result of TMZ detected in the kitchen (including spice containers, the extraction fan above the hob and the drains); and that, they would not move forward with Anti-Doping Rule Violation (ADRV) cases. This decision was also provided to World Aquatics (formerly FINA) at the same time as WADA, as required under the rules.

WADA omits the fact that its own rules required CHINADA to issue rule violations, publicly announce the violation, and disqualify the results from the date of the positive test—even if the source was food/environment contamination.

WADA: In order to determine whether WADA would exercise its right to appeal this decision, WADA carefully reviewed CHINADA's decision and, on 21 June, WADA requested the full case file. World Aquatics also requested and received the exact same case file as WADA. They undertook their own review.

Did WADA's careful review include providing information, including the case file when received, to its Intelligence and Investigations (I&I) Department?

WADA: During its 21-day appeal deadline, WADA sent the case file to external counsel for their review and advice and to WADA's Science Department to assess the case from a scientific perspective. Following thorough scientific investigation, including feedback from the manufacturer of TMZ, the feedback from WADA's Science Department was ultimately that the contamination scenario was plausible and that there was no concrete scientific element to challenge it.

WADA's own rules state that the standard of proof the athlete has to satisfy is by a "balance of probability," not "plausibility." It is unclear why WADA refers to "plausibility" because in doing so, WADA has flipped strict liability on its head.

In its statement, WADA appears to acknowledge that it did not provide the case file to its investigators. How would its investigators know they have “no impetus to investigate” as they told USADA in 2023, if WADA never provided them the case file?

The results of the “thorough scientific investigation” are not publicly available. It is impossible to “peer review” the science without seeing it.

The manufacturer of TMZ almost certainly does not have urinary excretion data as it’s not relevant to them.

WADA’s appeal deadline does not start to run until they receive the full case file, which must include a summary of the decision and supporting reasons in French or English. WADA indicated that it requested the full case file but did not confirm whether it received the full case file. There were reportedly no B samples analyzed, and they have not confirmed whether, if it received the full case file, WADA translated all components of the case file as part of its review.

WADA: In early July, WADA received legal advice, drafted by a barrister from the UK, that an appeal to the Court of Arbitration for Sport (CAS) was not warranted.

WADA leaves out that the other attorney it sought advice from was its current General Counsel, who at the time worked at a law firm closely connected with sport.

WADA also does not explain whether the advice addressed the obvious failures to apply mandatory rules: (1) finding violations, even if the source was contamination; (2) disqualification of results from the date of the positive tests; and (3) public disclosure of the violations. WADA’s failure to enforce these mandatory provisions to ensure transparency and harmonization of rule enforcement undermines the confidence and trust needed in a global regulator.

By permitting these violations to go unannounced, WADA covered them up. WADA’s rules required that these positive tests be publicly disclosed, but the violations only reached the light of day through the actions of brave whistleblowers and fearless reporting.

WADA: Based on all available scientific evidence and intelligence, which was gathered, assessed and tested by experts in the pharmacology of TMZ; and, by anti-doping experts, WADA had no basis under the World Anti-Doping Code to challenge CHINADA’s findings of environmental/food contamination – a position that was also reached by World Aquatics, which equally decided not to appeal the CHINADA decision.

WADA ignores that it would have had 100% chance of success on appeal to enforce mandatory provisions of the Code that were not followed:

- Positive tests, even if resulted from kitchen contamination, must result in a violation.
- Results must be disqualified from the date of the positive test.
- Violations must be publicly disclosed for adult elite athletes.

No scientific evidence has been published or warnings provided to athletes if WADA believed TMZ was a contamination risk.

World Aquatics has a clear conflict of interest given its primary objective is to promote its sport.

WADA: In 2022, the International Testing Agency (ITA) contacted WADA in connection with a tip-off it had received suggesting that the Chinese swimmers' sample results had been manipulated and/or not properly reported. WADA followed-up on these allegations and liaised with the ITA. Based on these investigations, there was no evidence whatsoever that the sample results had been manipulated or wrongly reported. Rather, the evidence clearly showed that the results had been properly reported by CHINADA. During its discussions with the ITA, WADA's investigators liaised with investigators from the ITA, and invited WADA's Science Department to explain its conclusions on the case (based on its review the previous year) to the ITA.

Conspicuously absent from WADA's tip timeline is USADA's relaying of a tip toward the end of 2020 that alleged Chinese athletes were avoiding being tested. ARD reported that there was indeed a gap in testing of Chinese swimmers in the lead up to the event at which 23 tested positive.

In 2023, WADA informed USADA of intelligence it received in the summer of 2021, without providing the content of that intelligence, but this too is absent. Why is WADA omitting intelligence it received from its fact sheet?

WADA's extraordinarily narrow reading of the tip from ITA is head-scratching. If a positive sample is not publicly announced, as required under WADA's own rules, then it is completely understandable that someone aware of the positive tests would report that sample results were not properly reported or that they were manipulated. WADA suggests that because it agreed with violating its own rules by not reporting these positive samples, the tip was not credible.

WADA: In April 2023, USADA's investigation department contacted WADA Intelligence & Investigations (I&I) based on a tip-off that it had apparently received alleging that these cases had been hidden and that the informant/source claimed to possess evidence. WADA of course knew that the cases had not been hidden as it had reviewed them with World Aquatics in 2021 and discussed them with ITA in 2022. WADA therefore advised USADA that it was aware of these cases, which had been reviewed by both its Legal and Science Departments. It made clear that if USADA had any new evidence, it would be willing to review the same and reassess its position, as well as interview USADA's source. USADA did not respond, and no evidence was provided.

USADA had previously informed WADA that the whistleblower wished to remain anonymous but provided WADA contact information for the individual. Additionally, as USADA indicated in its email to WADA relaying the tip in 2023, USADA planned to follow up with WADA by phone. USADA indeed responded to WADA's email by having a conversation with the head of WADA's I&I Department during which USADA was informed that he was not aware of 20 positive tests, noting that he was only aware of around 5.

It is now more clear than ever based on WADA's fact sheet and other statements by WADA that it did not provide its own I&I Department the complete case file of these positive tests. If accurate, this is inexcusable, and no surprise that its I&I Department came to the conclusion it had "no impetus to investigate."

WADA: WADA stands firmly by the results of its scientific investigation and legal decision concerning the case. We are equally confident that WADA's independent I&I Department followed up on all allegations received, which were not corroborated by any evidence, and thus did not meet WADA I&I's threshold to open an investigation.

Again, it seems evident WADA shielded its I&I Department from the case file, so that it could not connect the dots between the tips and the positive tests. There was more than enough evidence to proactively investigate these positive tests.

Additionally, the results of the scientific investigation should be made public for transparency.

WADA: To be clear, if any new evidence had come to light at any point, WADA would have reviewed the information. This remains the case today.

WADA had more than enough evidence to initiate an investigation into the source of the positive tests.

WADA's rules also required CHINADA to open an investigation into an athlete support person who had supported more than one athlete who committed a violation. By allowing CHINADA not to declare violations contrary to WADA's own rules, WADA also allowed CHINADA not to investigate the relevant coaches and support staff.

## WADA FAQs

### **1. Why is WADA accepting a trimetazidine (TMZ) contamination explanation in this situation but not with others?**

Contamination can occur in various forms (e.g. contaminated nutritional supplements, contaminated meat, contaminated water, contamination of medicines). In each case of alleged contamination, the specific contamination scenario must be assessed and tested in order to determine whether it is plausible, compatible with the Adverse Analytical Finding(s) [AAF(s)] and likely to be accepted on the balance of probabilities.

The specific contamination scenario has not been tested. They found TMZ in parts of the kitchen and drains but have not explained how it got there, what amounts would have been in the food, and whether the proposed amount would result in the concentrations observed (including those going from negative to positive).

How did the athletes establish by a “balance of probability” the source of their positive tests without having answers to how the prescription medication ended up in the kitchen, which foods it would have been in, and in what quantities?

This was thoroughly done in this case and not only was there no evidence pointing towards a doping scenario, but all the existing evidence was supporting the theory of contamination.

No factual investigation occurred, and tips were not connected with the cases.

The doping scenario is obvious: a coordinated doping regime in preparation for competition. Additionally, WADA need not prove a doping scenario to establish a violation; its own rules establish strict liability.

The absence of evidence of intentional doping, especially when no factual investigation was done, is not evidence of absence. Stated differently, just because evidence may support one theory, it does not mean the other theory is also not equally, if not more, likely.

Indeed, even leaving aside the fact that TMZ was discovered by the Chinese authorities in the kitchen of the hotel, the analytical results – in particular, the fact that all the positive results were within a tight range at low or very low concentrations, as well as the fact that, where athletes were tested more than once, their results fluctuated between negatives and (low-level) positives a few hours apart – were not consistent with an excretion profile of a deliberate ingestion scenario of TMZ, but rather with some form of contamination.

WADA has provided no evidence on the excretion profile for TMZ and why it supports contamination. All that can be determined from the analytical results is that all athletes ingested a similar amount of TMZ at a similar point in time. This could have been ingested 1-3 weeks earlier in a coordinated doping scheme.

Conversely and by way of example, in the case of the Russian ice skater, Kamila Valieva, her initial explanation of contamination through contact with her grandfather was found (when reviewed by WADA's Science Department) not to be consistent with the pharmacokinetics of TMZ and was therefore challenged by WADA before the CAS Ad Hoc Tribunal at the 2022 Winter Olympic Games in Beijing. WADA also challenged the athlete's subsequent explanation – that she was contaminated indirectly through a strawberry dessert that her grandfather had prepared for her – during the CAS appeal proceedings. The CAS ultimately accepted WADA's position that there were serious evidentiary shortcomings in the athlete's explanation.

We may never know what WADA would have uncovered had it conducted an investigation into the source of the 23 elite Chinese swimmers' positive tests.

## **2. Why did WADA not impose a provisional suspension on the Chinese swimmers in this case?**

Under the World Anti-Doping Code (Code), WADA does not have the authority to impose provisional suspensions itself. This authority lies with the Results Management Authority, which in this case was the China Anti-Doping Agency (CHINADA).

WADA's rules required CHINADA to “promptly” impose a provisional suspension on these athletes “upon or after the review and notification required by Article 7.2.”

Article 7.2 does not contemplate an investigation into the source of a positive test. The review is limited to (a) whether a Therapeutic Use Exemption had been granted or will be granted; (b) there was a departure in the rules related to how a sample was collected or how the lab analyzed the sample and that departure caused the positive test; and/or (c) that the prohibited substance was ingested via a permitted route (which is inapplicable for a substance like TMZ). (Code Article 7.2 and ISRM Section 5.1.1)

Once this limited review is complete, CHINADA was required to “promptly” notify the athlete and impose the mandatory provisional suspension. CHINADA took neither of these required actions and WADA failed to enforce its own rules. (ISRM Section 6.2)

## **3. Why did WADA not appeal against CHINADA's decision not to impose a provisional suspension?**

From the outset, the analytical results were indicating a possible contamination scenario.

WADA keeps saying this, but coordinated doping was equally possible from the outset, particularly given the tips WADA received.

Having decided to find out what could have happened in these unusual circumstances, CHINADA initiated an investigation to determine whether contamination had occurred and to discover the source of the trimetazidine (TMZ) in the swimmers' samples.

As explained above, this is completely contrary to WADA's own rules. The rules allow for a review limited to three specific areas. WADA's rules do not permit an anti-doping organization to delay notification of athletes so that it can investigate the source of a positive test.

During the time of its investigation CHINADA did not issue a formal decision to impose or not to impose a provisional suspension. Therefore, there was no decision that WADA or World Aquatics could have appealed against to the CAS.

WADA's diminishment of its own appeal powers as the global regulator for anti-doping is shocking. Its rules state that it has the ability to appeal "an Anti-Doping Organization's failure to comply with Article 7.4." (Code Article 13.2). In turn, Article 7.4 requires CHINADA to promptly impose a mandatory provisional suspension.

WADA had the power to appeal CHINADA's "failure to comply with Article 7.4" when CHINADA failed to impose a mandatory provisional suspension. WADA appears to be ignoring its own rules because the rules reveal that WADA had the power to act and chose not to do so.

A review of the circumstances by CHINADA, as permitted by the Code, before taking a decision on provisional suspension was not deemed unreasonable in the circumstances.

While a comment to the rules allows CHINADA to give the athletes an opportunity to challenge the provisional suspension before a hearing panel prior to or promptly after imposition, WADA's rules do not permit CHINADA to delay notification and imposition of a provisional suspension to investigate the source of a positive test. And WADA's rules still require that the provisional suspension be imposed promptly upon or after the narrow review discussed below. But WADA has omitted this required process under its own rules.

#### **4. Do provisional suspensions have to be imposed immediately by the relevant Anti-Doping Organization (ADO) as soon as there is a positive finding for a prohibited substance?**

For some substances (so-called non-specified substances such as TMZ), there is a mandatory provisional suspension.

WADA omits the answer to the question, which is yes. WADA's rules require that an athlete receive notification and be provisionally suspended after testing positive for non-specified substances like TMZ after a limited review into (a) whether a Therapeutic Use Exemption had been granted or will be granted; (b) there was a departure in the rules related to how a sample was collected or how the lab analyzed the sample and that departure caused the positive tests; and/or (c) that the prohibited substance was ingested via a permitted route (which is inapplicable for a substance like TMZ). (Code Article 7.2 and ISRM Section 5.1.1)

For other substances (so-called specified substances), the provisional suspension is optional.

Even for mandatory provisional suspensions, there are exceptions, one of which is specific to cases of likely contamination. In terms of timing, the Code allows for athletes to provide explanations for the positive finding before a provisional suspension is imposed.

WADA's own rules require that an athlete who tests positive "demonstrate to a hearing panel that the violation is likely to have involved a Contaminated Product" to have a mandatory provisional suspension "eliminated." (Code Art. 7.4.1). Of course, none of that happened here. No hearing panel was convened to hear evidence of whether the athletes established it was "likely" that their positive tests were caused by a contaminated product so that their provisional suspensions could be eliminated.

For mandatory provisional suspensions, the athletes might seek to argue based on their explanation of the positive finding that a provisional suspension should not be imposed because they fall within one of the exceptions (e.g., contamination).

As stated above, under WADA's own rules the athletes would have to establish "to a hearing panel" that their positives were "likely" caused by a contaminated product. There is no provision in the Code that allows an anti-doping organization to unilaterally decide not to impose a provisional suspension, and such inaction is clearly appealable by WADA under Code Article 13.2.

In this case, from the get-go, there were strong indications this could be a contamination case and that the source could be the same for all athletes (see Facts above). In theory, each of the athletes could have been asked to provide an explanation as to how the substance got into their body. However, when confronted by the unusual situation where 23 athletes tested positive for the same substance, at the same time, and at similar very low levels, the Chinese authorities decided to investigate the matter to try to determine what had happened. Given that China was in the middle of a COVID-19 lockdown and there were strict travel restrictions in place, it would have been impossible for each athlete to travel back to the hotel or venue to try to determine how they ingested the substance. The approach seemed fair and reasonable to the athletes under the circumstances.

The facts and intelligence also support a finding of coordinated intentional doping such that WADA should have initiated an investigation into the source of these positive tests. But it did not, failing all clean athletes.

Nothing about the situation in China at the time prevented CHINADA from following the rules and WADA enforcing its own rules. Despite COVID-19 lockdowns around the world, anti-doping organizations continued to notice athletes of violations and impose mandatory provisional suspensions. CHINADA ignored these rules, and WADA permitted it.

If CHINADA had followed the rules, and subsequent to imposing mandatory provisional suspensions, the swimmers who tested positive needed government approvals to allow experts to investigate the source of their positive tests, then they could have asked for such accommodations and CHINADA could have assisted in facilitating those accommodations. But that does not mean the rules should have been ignored altogether as they were in this case.

#### **5. Would the swimmers have had any performance benefit as a result of the TMZ?**

Based on the concentrations of TMZ detected in the athletes' samples, there would have been no performance benefit during the national competition on 1-3 January 2021, let alone at subsequent events such as the Olympic Games in Tokyo some seven months later.

TMZ is a non-threshold substance, meaning any concentration in a sample is a violation of the rules. Whether the concentration conveyed a therapeutic effect at the time a sample is collected is not relevant under WADA's rules. The athletes would have received a benefit after taking a therapeutic or sub-therapeutic dose in the weeks prior to the event, enabling them to train harder, and thereby perform better in the competition, with little to no trace of TMZ left in their system.

The national event from 1-3 January 2021 was not a qualification event for the Olympic Games and there were no international events held before the Olympic Games in Tokyo.

WADA fails to mention that, according to ARD, China's Olympic Trials occurred during CHINADA's and the public authorities' investigation into the source of the positive tests. If the athletes had been provisionally suspended as required under the rules, the 13 swimmers who qualified for the Olympics at those Olympic Trials would not have participated, unless they established to a hearing panel that their positives were likely caused by a Contaminated Product.

#### **6. Does WADA agree with the decision by CHINADA not to bring forward Anti-Doping Rule Violations (ADRVs) against the 23 swimmers?**

After a thorough review of the case file and consultation with scientific and legal experts, WADA decided based on the advice of specialized external lawyers not to challenge the contamination scenario put forward by the Chinese swimmers.

In addition to the discovery of TMZ in the kitchen of the hotel at which the athletes were staying, there were contextual and scientific factors that pointed strongly towards contamination rather than deliberate ingestion or cheating, including:

- There were 23 swimmers and 28 positive samples. **Facts, not science.**
- The swimmers were from different regions of China, with different coaches and from different swimming clubs. **Details provided by Chinese authorities, not science.**
- The swimmers were in the same place at the same time when the positive samples arose. **Facts accepted by Chinese authorities, not science.**
- All of the sample results were at consistently low levels. **Only indicates low amounts excreted at that time. This does not speak to intent.**

- A number of these athletes were tested on multiple occasions during the swim meet. Some of them were tested on three occasions on consecutive days. For several athletes, the results varied from negative to positive a few hours apart, which is not compatible with deliberate ingestion nor microdosing. **No scientific data has been presented to support this. Additionally, this would not be uncommon at concentrations near the laboratory's limit of detection due to variability of an athlete's samples based on factors like hydration.**
- Also, one team of athletes stayed in a different hotel. Three of those athletes were tested and none tested positive for TMZ. **But some athletes at the same hotel did not test positive, so this is not evidence that there was no coordinated doping scheme.**

For largely technical reasons, WADA did not agree entirely with CHINADA's approach. However, having determined that it was in no position to challenge the contamination scenario, WADA decided not to initiate 23 technical appeals to CAS to effectively replace findings of "no ADRV" with findings of "ADRV with no fault or negligence" on the part of the athletes. Such appeals, even if successful, would have changed absolutely nothing in terms of athlete perception at the Olympics or any other event.

**It is shocking and disturbing that the global regulator charged with ensuring harmonization of rule enforcement believes transparency is worth "nothing," which is how WADA characterizes the effect of requiring CHINADA to follow the rules by publicly announcing violations. WADA also omits the fact that CHINADA was required to disqualify the results from the dates of the positive tests, which it failed to do. And this too was an important reason for appeal.**

**As a global regulator that appeals cases with some regularity, it is difficult to understand WADA's reasoning for not appealing given the open and obvious violations of the rules, which provided guaranteed success on appeal. Success on appeal was so certain that WADA would likely not have even had to spend much money on legal fees because CHINADA, recognizing its clear errors, could have sensibly corrected its errors and settled the appeal without challenge. WADA, however, chose to go along with CHINADA's cover up of these anti-doping rule violations and the blatant disregard of WADA's own rules.**

#### **7. If WADA did not agree with the decision by CHINADA not to bring forward the cases as anti-doping rule violations, why did it not appeal to CAS?**

WADA followed the advice of specialized external lawyers, in light of the complete case review, not to appeal these cases. If WADA had appealed, it would have been a technical appeal to convert a finding of no ADRV into a finding of an ADRV with no fault on the part of the athletes.

**WADA cannot hide behind external lawyers, one of whom is now WADA's General Counsel. WADA is responsible for its decisions. And here it failed clean athletes by not doing any investigation into the source of the positive tests and not holding CHINADA to account for ignoring the rules. What a narrowly focused lawyer may have seen as inconsequential legally, must be reviewed by an executive at WADA who appreciates the significance of transparency, accountability, and**

harmonization for these types of cases. WADA's leadership unquestionably failed clean athletes and the entire anti-doping system.

Transparency by way of publicly disclosing violations and disqualifying results cannot be reduced to a "technicality." These were blatant breaches of fundamental requirements of the anti-doping system. The harmonized enforcement of rules is even more critical when the evidence of contamination is questionable and there were tips raising further suspicion of a systemic doping regime.

If WADA had appealed, it would not have been able to obtain a judgement before the Tokyo Olympic and Paralympic Games in July/August 2021. In all likelihood, the judgement would not have been issued before 2022.

This statement is misguided at best. The violations were so clear and obvious here, it is unlikely CHINADA would have challenged the appeal. While CHINADA may have tried to delay the resolution until after the Olympics, given the obvious disregard of the rules, CHINADA would likely have settled the matter before a hearing. Moreover, if WADA was not challenging the facts on appeal (because it had no basis to do so without having conducted an investigation), then there may have been no need for a hearing beyond oral argument, which could have led to a faster resolution. Finally, regardless of when a judgment was issued, by appealing, WADA would have at least been trying to fulfill its core mission of enforcing its own rules. The fact that the appropriate outcome may have taken a few months in no way negates or diminishes the importance of WADA's key role in upholding the rules and harmonizing their enforcement throughout the world.

Moreover, given that WADA would have accepted that the athletes had no fault or negligence, it would not have requested that any period of ineligibility be imposed or that any results (after the national competition in January 2021) be disqualified. As such, any athlete eligible and qualified to compete in Tokyo, would have still been permitted to take part in the Tokyo Games. For reasons of pragmatism and fairness towards the athletes (who would have had to face this legal challenge on the eve of the Olympic and Paralympic Games), WADA decided not to lodge what would have been a largely technical appeal.

The lengths to which WADA minimizes and excuses its own failure to adhere to its rules is astounding. WADA reiterates again and again that transparency and disqualification are "technical" and unimportant. This is a profound disservice to clean athletes everywhere.

WADA also ignores the fact that these athletes were eligible for the Olympics in part because WADA did not enforce its rules requiring a mandatory provisional suspension.

In other instances, WADA has not hesitated to bring appeals on the eve of important competitions.

WADA also ignores the fact that CHINADA apparently did not even notify the athletes of their positive tests, so if WADA had appealed, CHINADA would have likely taken care of everything for

the athletes, as they did with “establishing” the source for them, without disrupting the athletes’ preparations for the Olympic Games.

It should be noted that WADA has never in its history appealed against a finding of no ADRV to convert it into a finding of a violation with no fault. WADA is not aware that any other Anti-Doping Organizations (ADOs) have done this either. Further, when other ADOs have determined in similar circumstances (including cases where multiple athletes from the same team have been subject to food contamination) to close cases with no ADRV (when they should have been ‘ADRV with no fault’ cases), WADA has not appealed. These prior cases of established contamination have involved different sports and different countries over many years.

There is no rule that would allow for this outcome, and it is concerning that WADA would turn a blind eye to the rules when this has occurred. WADA’s rules have undergone multiple revisions over the years, and WADA has had ample opportunity to address this issue if this was a recurring issue over the years. But WADA has not made changes to the rules in this regard. WADA’s rules are clear that, even when contamination is established, a positive test results in a violation, disqualification, and public disclosure.

If WADA has habitually and/or selectively chosen not to enforce its rules, WADA should be immediately audited to examine all of these circumstances.

#### **8. Why did WADA not make any publication about these cases?**

As explained above, CHINADA decided not to charge these athletes, and although WADA did not entirely agree with that decision, WADA did not appeal for the reasons explained.

WADA refers to CHINADA not charging the athletes, but reports indicate CHINADA did not even notice the athletes of their positive tests.

As a result, no ADRV was established. As the ADRVs were not asserted, there was no basis in the Code to publish any details about the cases.

Using one instance of disregarding the rules (not finding a violation when the rules required finding a violation) to justify another failure to follow the rules (public disclosure) is unconvincing to say the least.

It should be noted that, in recent years, a number of ADOs have argued that publication of cases in which athletes are found to have no fault or negligence (as WADA accepted here) is unfair to athletes.

As an example, in a recent case that was resolved as no fault by the United States Anti-Doping Agency (USADA), in which the athlete was found to have innocently come into contact with a prohibited substance by administering medication to their dog, USADA CEO Travis Tygart has been publicly quoted as saying the following: “If there is no question that an athlete comes into contact

with a prohibited substance from a completely innocent source and there is no effect on performance, USADA continues to advocate that there should not be a violation or a public announcement.”

In fact, within the context of WADA’s current 2027 Code and International Standard Update Process, USADA is one of the ADOs that has requested that WADA change the rules to provide for no publication in cases of no fault or negligence. This request is currently being considered by the Code revision team.

Advocating for changes to the rules is no excuse for not applying the rules as currently written. USADA has continued to publicly disclose no fault cases to ensure harmonized application of the rules throughout the world. It is devastating WADA has not done the same.

And far from there being no question that the elite Chinese swimmers came into contact with a prohibited substance from a completely innocent source, there are a host of serious unanswered questions for which we may never have sufficient answers, given WADA’s failure at the time to undertake any factual investigation.

**9. What is WADA going to do about the serious data breach that led to athletes’ personal information being leaked?**

As requested by WADA’s Athlete Council Chair, Ryan Pini, WADA will be conducting a full inquiry into what led to these athletes’ information being leaked to the media and will take all necessary steps to sanction those responsible for violating their privacy and exposing them to unfair criticism given the facts, which are that they are victims of contamination.

WADA continues to relabel the theory of contamination as fact.

It is ironic that WADA is going to investigate whistleblowers who caused athlete information to become public when WADA’s own rules required that information be made public for the adult athletes involved. And that information would have and should have been made public in 2021 but for the cover-up.

WADA stands by the contamination theory put forward by the Chinese public authorities because it conducted no investigation into the source of the positive tests that may have yielded evidence discounting this theory.

Was the full WADA Athlete Council consulted about the request by Mr. Pini? Did the full WADA Athlete Council sign off on this statement?

**10. Why does WADA have such confidence in its handling of this case given the reaction that has played out in the media?**

WADA conducted a thorough review of the case from a scientific perspective and ultimately followed the advice of external counsel not to appeal to the CAS.

There has been no scientific data shared or presented such that it can be reviewed or scrutinized.

Even leaving aside the Chinese investigation and its discovery of TMZ in the hotel kitchen, WADA's scientific feedback based on the analytical results was that there was no concrete scientific element to challenge a case of contamination.

Analytical results alone cannot demonstrate anything other than at that point in time the body was excreting low amounts of TMZ. The scientific elements supported contamination as much as intentional use. Contamination could have been challenged on the fact that the public authorities did not establish how TMZ got into the kitchen and from there how it was ingested by the athletes and in what amounts.

WADA understands that some stakeholders may disagree with the outcome of this case. However, to leap to conspiracy theories of cover-ups and favoritism towards China is outrageous, without basis and defamatory. Rather than cover up these cases, WADA reviewed them thoroughly and discussed them with multiple international organizations at different points in time from 2021 to 2023.

The fact that WADA recognizes this outcome as controversial is all the more reason WADA should have ensured its own rules were followed through the required publication of the violations and disqualification. Its failure to do so while also failing to investigate the factual basis for the contamination scenario is fatal to WADA's credibility in this case.

Finally, we would invite stakeholders to consider the facts, the evidence of this case, and not to lose sight of the perspective of the athletes who were victims of contamination.

If one follows the facts, it is evident that WADA allowed these cases not to be publicly announced in 2021 when the rules required that they be publicly announced. Failing to ensure high profile cases in the weeks before the Olympic Games are publicly announced in accordance with the rules can only be described as WADA covering up those cases. Indeed, these cases would remain covered up by WADA had it not been for brave whistleblowers and reporters who rightfully brought these cases to light. WADA needs to be held to account.