

## NEW ERA ARBITRATION TRIBUNAL

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In the Matter of Arbitration Between:

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

**Case No.: 24081601**

v.

**Robert Karas,**  
**Respondent.**

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### FINAL AWARD OF ARBITRATOR

#### I. INTRODUCTION

1. Pursuant to the New Era ADR Rules and Procedures, as modified by the Procedures for the Arbitration of Olympic & Paralympic Sport Doping Disputes and the United States Anti-Doping Agency Protocol (“ the Protocol”) (effective as revised January 1, 2024) (“Arbitration Procedures”) as contained in the World Athletics Anti-Doping Rules and World Anti-Doping Code (the “Code”) (collectively known as the “Applicable Rules”), an evidentiary hearing was held by videoconference on December 20, 2024, before the duly appointed arbitrator, Jeanne Charles (“the Arbitrator”). United States Anti-Doping Agency (“USADA” or “Claimant”) is an independent anti-doping organization with headquarters in Colorado Springs, Colorado, USA. USADA has promulgated numerous anti-doping protocols, including the USADA Protocol referenced above.
2. This case arises from Robert Karas’ in-competition sample collected at the Florida ANVIL Ultra Triathlon on February 24, 2024, which tested positive for drostanolone and clomiphene, both of which are prohibited substances at all times per the 2024 World Anti-Doping Agency (“WADA”) Prohibited List.
3. 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

4. Robert Karaś (“Athlete” or “Respondent”) is an elite-level, 35-year-old ultra endurance athlete from Poland. He holds an impressive list of athletic achievements, including setting multiple world records. Specifically, Respondent holds the double ultra triathlon world record, which consists of a 4.7-mile swim, a 223-mile bike ride, and 52-mile run. He also holds the triple ultra triathlon world record, consisting of a 7-mile swim, a 340-mile bike ride, and a 78-mile run.
5. In the 2024 Florida ANVIL Ultra Triathlon event, which gave rise to his positive clomiphene test, Respondent was the only person to complete the 5x ultra triathlon event. That event consisted of a 12-mile swim, 560-mile bike ride, and 131-mile run. He completed the event in 60 hours, which set another world record.
6. USADA was represented in this proceeding by Spencer Crowell, USADA Olympic & Paralympic Counsel.
7. Respondent failed to appear.<sup>1</sup>
8. USADA and Respondent will be referred to collectively as the “Parties” and individually as a “Party.”

## III. ISSUE

9. While Respondent tested positive for both drostanolone and clomiphene, which are both prohibited substances, USADA is only proceeding with clomiphene because the presence of drostanolone can be explained by Respondent’s use of injectable drostanolone in 2023, resulting in his first anti-doping rule violation (“ADRV”).
10. On May 30, 2023, at an ultra triathlon held by the International Ultra Triathlon Association (“IUTA”) in Brazil, Respondent’s urine sample was collected by the Brazilian Anti-Doping Agency (“ABCD”)<sup>2</sup> and was analyzed by the WADA-accredited laboratory in Rio de Janeiro, Brazil, which reported the sample as positive for meldonium as well as drostanolone and drostanolone metabolite 2 $\alpha$ -methyl-5 $\alpha$ -androstan-3 $\alpha$ -hydroxy-17-one (the “IUTA ADRV”).

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<sup>1</sup> Tomasz Poplawski (Interpreter), Spencer Crowell and Murial Ossip with USADA were present at 10:00 a.m. Respondent was not present. The Arbitrator sent a message via the New Era portal informing Respondent that the hearing was about to begin, and he would be provided five (5) minutes to connect. At 10:11 a.m. Eastern Time the hearing commenced.

<sup>2</sup> Claimant Exhibit 4, ABCD Doping Control Form (May 30, 2023).

11. Respondent accepted a two-year sanction imposed by IUTA from May 30, 2023 through May 29, 2025.
12. Respondent submitted no evidence to the Arbitrator disputing the instant violation.
13. While the IUTA is not a Code Signatory, its anti-doping policy “adheres to the rules, regulations and policies of the World Anti-Doping Agency.”<sup>3</sup> “With respect to Respondent’s sanction, the IUTA specifically notes on its website that Respondent was sanctioned under Articles 2.1 and 2.2 of the Code, which govern violations for the presence of a prohibited substance in an athlete’s sample and the use/attempted use of a prohibited substance, respectively.<sup>4</sup> Additionally, when he registered for the Florida ANVIL Ultra Triathlon event, Respondent signed a waiver agreeing to be bound by the USADA Protocol.<sup>5</sup>
14. Thus, the Arbitrator in this proceeding must determine whether there is sufficient evidence to establish that Respondent has committed a second ADRV and the appropriate sanction, if any, to be imposed.
15. USADA requests the assessment of an eight-year suspension beginning May 30, 2025, which immediately follows the period of ineligibility for the IUTA ADRV, as required by Code Article 10.9.3.4. USADA contends this is the maximum penalty allowed and there are no mitigating circumstances that would warrant a reduction. USADA also seeks disqualification of competitive results on and after February 24, 2024, the approximate date Respondent used clomiphene.

### **III. JURISDICTION**

16. Respondent did not contest that this arbitration is governed, procedurally and substantively, by the Protocol as applicable to Respondent and his participation in the 2024 Florida ANVIL Ultra Triathlon event on February 24, 2024. As referenced above, Respondent completed a waiver binding him to the Protocol upon registering for the Event.
17. Pursuant to the applicable arbitration procedures, which are contained in the USADA Protocol, the Arbitrator has the power to rule on her own jurisdiction.

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<sup>3</sup> Claimant Exhibit 7, 2023 IUTA Rules.

<sup>4</sup> Claimant Exhibit 6, Respondent’s IUTA Sanction.

<sup>5</sup> Claimant Exhibit 3, Respondent’s Event Waiver.

18. No party has objected to the jurisdiction of the Arbitrator or asserted inarbitrability of the claim.
19. Accordingly, the instant matter is properly before this Arbitrator.

#### **IV. PROCEDURAL HISTORY**

20. USADA collected a urine sample from Respondent while in competition at the Florida ANVIL Ultra Triathlon on February 24, 2024.
21. USADA sent Respondent's sample to the WADA-accredited laboratory in Salt Lake City, Utah. The laboratory reported Respondent's sample as an Adverse Analytical Finding ("AAF") for the presence of drostanolone and clomiphene.<sup>6</sup>
22. On March 20, 2024, USADA sent Respondent a letter notifying him of the AAFs.<sup>7</sup> In that letter, USADA also notified Respondent that it had imposed a provisional suspension against him.
23. Respondent waived analysis of his B Sample on March 27, 2024.<sup>8</sup>
24. On July 26, 2024, USADA charged Respondent with ADRVs for the presence and use of clomiphene, pursuant to Code Articles 2.1 and 2.2, respectively.<sup>9</sup>
25. This proceeding was initiated on August 15, 2024, when Respondent requested a hearing, and USADA contacted New Era to initiate this matter the following day.<sup>10</sup>
26. On October 3, 2024, New Era appointed the undersigned Arbitrator to this case.
27. The Arbitrator in this matter first contacted the parties on October 7, 2024, to schedule the preliminary hearing, and the preliminary hearing was held on October 28, 2024, after Respondent failed to respond to the Arbitrator's attempts to schedule the hearing with his input.

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<sup>6</sup> Claimant Exhibit 8, A Sample Lab Report.

<sup>7</sup> Claimant Exhibit 10, Notice Letter (March 20, 2024).

<sup>8</sup> Claimant Exhibit 11, Signed Be Waiver Form.

<sup>9</sup> Claimant Exhibit 12, Charging Letter (July 26, 2024).

<sup>10</sup> Claimant Exhibit 13, New Era Initiation Letter (Aug. 16, 2024). New Era ADR originally assigned this matter to another arbitrator who accepted the appointment on August 20, 2024. However, that arbitrator never scheduled a preliminary hearing despite New Era's repeated attempts to reach them. This resulted in New Era removing that arbitrator from the matter.

28. Respondent, in fact, appeared at the preliminary hearing where a Polish interpreter was present. Respondent requested that the proposed hearing date of December 20, 2024, be delayed until April 2025 due to his demanding training schedule for his participation in a private Iron Man triathlon.
29. Respondent was informed that his requested date would exceed the time limits for arbitration hearings in the Protocol. Upon Respondent's request, the Arbitrator approved a representative to present his case in his absence.
30. Respondent was also informed that under Code Article 3.2.5, the Arbitrator would be permitted to make an adverse inference based on his failure to attend the hearing and respond to questions under oath. This was memorialized in the October 28, 2024 Scheduling Order issued by this Arbitrator.
31. On October 31, 2024, USADA submitted its pre-hearing brief, its witness designation, exhibits list and exhibits to the Arbitrator and Respondent.
32. Respondent failed to submit a pre-hearing brief, witness designation, exhibits list, or exhibits on the original due date of November 21, 2024 or the date provided after Respondent's request for an extension which was November 25, 2024.
33. On December 20, 2024, the Arbitrator held a full evidentiary hearing via video conference at which USADA along with a Polish interpreter for the Respondent's benefit were present. USADA was given the opportunity to call witnesses and present evidence, examine and cross-examine witnesses and make arguments in support of its position.
34. There was no court reporter as agreed upon by the Parties.
35. USADA called Henrique Marcelo Gualberto Pereira, Ph.D., Director of the Brazilian Doping Control Laboratory and Matthew Fedoruk, Ph.D., Chief Science Officer for USADA as witnesses.
36. No witnesses appeared on Respondent's behalf.
37. All witnesses testified under oath.
38. The Parties were provided with an opportunity to present oral opening and closing statements, give arguments, and raise any issues or argument in support of their respective positions.
39. The Parties elected not to submit post-hearing briefs.

40. The hearing lasted approximately one (1) hour.
41. At the conclusion of the hearing, the Arbitrator asked USADA whether it had any additional evidence to offer or witnesses to be heard, as required by the Protocol. USADA indicated that it did not.
42. The Arbitrator declared the hearing closed on December 20, 2024, upon receipt of USADA's written closing argument.
43. This arbitration is governed, procedurally and substantively, by the Protocol which is applicable to Respondent pursuant to his signed waiver.

## V. APPLICABLE LAW

### A. The Athlete's Responsibility

44. The World Anti-Doping Code is incorporated into the USADA Protocol. The WADA Prohibited List is also applicable in this matter. Clomiphene is a selective estrogen receptor modulator and is classified as a Hormone and Metabolic Modulator on the WADA Prohibited List.<sup>11</sup>
45. Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) of the Code proscribes the presence of prohibited substances or their metabolites or markers in an Athlete's sample and applies a strict liability standard, meaning athletes are responsible regardless of fault or knowing use. It states, in relevant part:
  - 2.1.1 It is the *Athletes'* personal duty to ensure that no *Prohibited Substance* enters their bodies. *Athletes* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their *Samples*. Accordingly, it is not necessary that intent, *Fault*, *Negligence* or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.<sup>12</sup> (Emphasis in the original).
  - 2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by...the presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in the *Athlete's A*

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<sup>11</sup> Claimant Exhibit 9, WADA Prohibited List (Jan. 1, 2024).

<sup>12</sup> Claimant 16 at 19.

*Sample* where the *Athlete* waives analysis of the *B Sample* and the *B Sample* is not analyzed....”<sup>13</sup> (Emphasis in the original).

46. Article 2.2 (Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method) of the Code proscribes the use or attempted use of prohibited substances and applies a strict liability standard, meaning athletes are responsible regardless of fault or knowing use. It states, in relevant part:

2.2.1 It is the *Athletes’* personal duty to ensure that no *Prohibited Substance* enters their bodies and that no *Prohibited Method* is *Used*. Accordingly, it is not necessary that intent, *Fault*, *Negligence* or knowing *Use* on the *Athlete’s* part be demonstrated in order to establish an anti-doping rule violation for *Use* of a *Prohibited Substance* or a *Prohibited Method*.<sup>14</sup> (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.<sup>15</sup> (Emphasis in the original).

## B. Burden and Standard of Proof

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

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<sup>13</sup> *Id.* at 20.

<sup>14</sup> *Id.* at 21.

<sup>15</sup> *Id.*

as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.<sup>16</sup> (Emphasis in original).

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

### C. Sanctions

49. Code Article 10.2.1 requires that the default period of ineligibility for a first ADRV involving a specified substance such as clomiphene is two (2) years unless the Anti-Doping Organization can establish that the ADRV was intentional, in which case the period of ineligibility shall be four (4) years.<sup>17</sup>
50. USADA avers that because the instant matter is treated as Respondent's second anti-doping rule violation, the penalty should be assessed pursuant to Code Article 10.9.1.1 which sets forth the sanctioning framework.<sup>18</sup>
51. When there are multiple ADRVs, Code Article 10.9.3.1 states, "the sanction imposed shall be based on the violation that carries the more severe sanction, including the application of *Aggravating Circumstances*."<sup>19</sup> (Emphasis in original).
52. 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.<sup>20</sup> (Emphasis in original).

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<sup>16</sup> *Id.* at 26.

<sup>17</sup> *Id.* at 65.

<sup>18</sup> This sanctioning framework is addressed more specifically in the Analysis and Findings.

<sup>19</sup> Claimant Exhibit 16 at 81.

<sup>20</sup> *Id.* at 82.



53. Pursuant to Article 10.13.2.1 of the Code, “[i]f 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....”<sup>21</sup> (Emphasis in original).
54. However, according to Article 10.13.2.3, “[n]o 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.”<sup>22</sup>

## VI. FACTUAL SUMMARY AND TESTIMONY

55. 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.
56. 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. Factual Background

57. Respondent is an elite-level, 35-year-old ultra endurance athlete from Poland. He holds an impressive list of athletic achievements, including setting multiple world records.<sup>23</sup> According to his competition history, Respondent holds the double ultra triathlon world record, which consists of a 4.7-mile swim, a 223-mile bike ride, and 52-mile run. He also holds the triple ultra triathlon world record, consisting of a 7-mile swim, a 340-mile bike ride, and a 78-mile run.
58. Respondent was the only person to complete the 5x ultra triathlon event at the 2024 Florida ANVIL Ultra Triathlon which gave rise to his positive clomiphene

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<sup>21</sup> *Id.* at 84.

<sup>22</sup> *Id.* at 85.

<sup>23</sup> Claimant Exhibit 1, Respondent’s Competition History.

test. That event consisted of a 12-mile swim, 560-mile bike ride, and 131-mile run. He completed the event in 60 hours, which set another world record.

59. As referenced above, the Florida ANVIL Ultra Triathlon was sanctioned by USA Triathlon, a Code Signatory, and Respondent obtained a USA Triathlon membership for the event. Additionally, when he registered for the Florida ANVIL Ultra Triathlon, Respondent signed a waiver agreeing to be bound by the USADA Protocol.
60. Respondent's first ADRV occurred on May 30, 2023. This was during a Deca Triathlon event organized by the IUTA in Brazil, which included a 23-mile swim, a 1,118-mile bike ride, and a 262-mile run. During this event, Respondent tested positive for prohibited substances. The sample was collected by ABCD and analyzed by a WADA-approved lab in Rio de Janeiro, Brazil. The sample tested positive for meldonium as well as drostanolone and drostanolone metabolite 2 $\alpha$ -methyl-5 $\alpha$ -androstan-3 $\alpha$ -hydroxy-17-one.
61. The Brazil laboratory did not detect the presence of clomiphene or its metabolites in Respondent's sample despite screening for those substances. As a result of this reporting, Respondent accepted a two-year sanction for his positive test, which runs from May 30, 2023 through May 29, 2025.
62. The IUTA specifically notes on its website that Respondent was sanctioned under Articles 2.1 and 2.2 of the Code, which govern violations for the presence of a prohibited substance in an athlete's sample and the use/attempted use of a prohibited substance, respectively.<sup>24</sup>
63. In the instant case, USADA collected a sample from Respondent in-competition at the Florida ANVIL Ultra Triathlon on February 24, 2024. The sample was tested at the WADA-accredited laboratory in Salt Lake City, Utah resulting in an AAF for the presence of drostanolone and clomiphene.<sup>25</sup>
64. The Prohibited List classifies drostanolone as a non-specified substance in the class of Anabolic Agents and clomiphene as a specified substance in the class of Hormone and Metabolic Modulators. Both substances are prohibited at all times.<sup>26</sup>
65. After receiving the March 20, 2024, letter from USADA notifying him of the AAFs and imposing a provisional suspension, Respondent claimed that the prohibited substances in his sample were merely residual from his earlier case

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<sup>24</sup> Claimant Exhibit 6, Respondent's IUTA Sanction.

<sup>25</sup> Claimant Exhibit 8, A Sample Lab Report.

<sup>26</sup> Claimant Exhibit 9, Prohibited List.

with the IUTA and Respondent waived analysis of his B Sample on March 27, 2024.<sup>27</sup>

66. On April 3, 2024, USADA's investigator, John Loney, conducted a recorded telephone interview with Respondent who was present with his manager, Michel Jurczga, in Poland. A Polish translator was also on the call.
67. As it relates to the clomiphene, Respondent explained that he took clomiphene pills for around two (2) weeks in December 2022 and January 2023. He said he was taking the clomiphene along with testosterone injections during that time period, as he had a broken leg and wanted to be able to compete in an upcoming fight. Respondent stated he was told by the "specialist" who provided the substances that they would only be present in his body for up to 72 hours and would not give him any long-term advantage.
68. Claimant agrees that due to the unique pharmacokinetic properties of injectable drostanolone the presence of drostanolone may be residual. However, Claimant contends that the presence of clomiphene was not residual since Respondent had not tested positive for clomiphene in his previous matter. Therefore, Respondent was charged with the instant ADRVs.
69. According to the expert report of Dr. Matthew Fedoruk dated October 28, 2024, and entered into the record as Claimant Exhibit 15, clomiphene is a selective estrogen receptor modulator and is classified as a Hormone and Metabolic Modulator on the WADA Prohibited List.
70. Clomiphene is commonly prescribed as a fertility drug for women that works by stimulating the release of hormones responsible for ovulation. Despite its legitimate use in treating female infertility, clomiphene is also a highly effective doping agent prohibited in sport because of its potential to reduce the negative feminizing effects of anabolic steroid use and to stimulate testosterone production within the body.
71. These testosterone stimulating effects are particularly beneficial to ultra endurance athletes such as Respondent because heavy endurance training can result in sustained testosterone suppression. Enhanced testosterone production can boost an athlete's performance and expedite recovery which Claimant avers is of paramount importance to athletes whose weekly training regimens consist of hundreds of miles of running, swimming and cycling.
72. Dr. Fedoruk explained, "Clomiphene can be used to 'kickstart' testosterone production by stimulating the hypothalamic-pituitary-gonadal (HPT) axis and the release of gonadotropins from the brain, which then signals the testis

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<sup>27</sup> Claimant Exhibit 11, B Sample Waiver.

to produce more testosterone. Increased testosterone production can aid in enhancing recovery and have an immediate effect on the body's ability to repair, rejuvenate and rebuild muscle. These are ideal qualities for an athlete seeking to train and perform optimally.”<sup>28</sup>

73. Dr. Fedoruk's report also noted that “an athletes use of clomiphene could naturally be expected to follow recent drostanolone use.”<sup>29</sup> In this regard, Dr. Fedoruk provided the following opinion about the drostanolone use:

Upon contacting the Rio Laboratory, and after a detailed review of the urinary drostanolone and its main metabolite concentrations detected in Mr. Karas' 30-May-2023 sample (very high), and comparing that to the USADA sample collected 24-February-2024 (very low), and considering that injectable drostanolone can be detected in athletes for a prolonged period of time due to its pharmacokinetic and human metabolic factors, route of administration, and USADA's past experience with other drostanolone and similar anabolic agent cases, USADA determined that we could not exclude the possibility that very low concentrations of drostanolone could be detected in the urine approximately 13 months after last use of intramuscular drostanolone.<sup>30</sup>

74. However, after consulting with the Rio Laboratory regarding the negative clomiphene result from the urine sample collected on May 30, 2023, Dr. Fedoruk confirmed that the sample was negative for clomiphene and its metabolites. As a result, and in accordance with published studies about clomiphene, it was concluded that the positive test can be explained by clomiphene administration sometime after May 30, 2023, and before the sample collection on February 24, 2024.
75. Respondent has never applied for or been granted a Therapeutic Use Exemption (TUE) for clomiphene or drostanolone.

## B. Testimony

### *Claimant Witness Testimony*

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<sup>28</sup> Claimant Exhibit 15, Dr. Fedoruk Expert Report ¶ 7.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at ¶ 13.

76. The summary presented below reflects portions of the testimony presented by the witnesses deemed relevant by the Arbitrator.
77. Claimant called Henrique Marcelo Gualberto Pereira, Ph.D. as its first witness. He is the Director of the Brazilian Doping Control Laboratory in Rio de Janeiro. The findings from Respondent's May 30, 2023 sample were confirmed to be positive for drostanolone and melodeum. Dr. Gualberto Pereira testified further that Respondent's sample was negative for clomiphene, which was part of the standard screening, as required by WADA. His report was entered into the record as Claimant Exhibit 5.
78. Claimant's second witness was Matthew Fedoruk, Ph.D. He is the Chief Science Officer at USADA and is currently the Chair of the WADA Strategic Testing Expert Advisory Group. At USADA, he reviews all the testing and lab documentation and is engaged in the TUE process.
79. Dr. Fedoruk's testimony contained the adoption of his expert report. In further explanation of his report, he testified that he reviewed the Brazil laboratory report regarding Respondent's May 30, 2023, sample numbered 6504502. He testified there were no deviations in collection or lab standards by the Brazil or USADA laboratories.
80. Dr. Fedoruk testified that clomiphene can be obtained by prescription or on websites. It is a synthetic drug which is not used in livestock or supplements. He explained that the ultra triathlon is an extreme sport activity which can result in caloric deficit. Clomiphene can trick the body to override the deficits.
81. In his opinion, the clomiphene detected was not residual as higher levels of the substance are observed at the initial ingestion and declining levels are observed toward the tail end of use. He stated the sample tested was consistent with a more recent use.
82. Dr. Fedoruk testified further that clomiphene is easy to detect and will show up in very low concentrations in the urine. The Brazil laboratory looked for the parent and the metabolites of clomiphene and it was not detected during the prior ADRV finding.
83. Dr. Fedoruk noted that clomiphene can be used as a stand-alone substance or in conjunction with a steroid.

***Respondent Witness Testimony***

84. No witnesses appeared on Respondent's behalf.

## VIII. POSITIONS OF THE PARTIES

### A. Claimant's Position

85. First, Claimant argues that USADA has met its burden that Respondent has committed the charged ADRVs. Because Respondent tested negative for clomiphene in the May 30, 2023 sample analyzed by the Brazilian laboratory, it is not possible that Respondent's positive test in the instant matter could be attributable to use sometime before the February 24, 2024 sample was collected.
86. Second, Claimant also contends that the appropriate sanction in this case is eight (8) years because the use was intentional; it was his second ADRV within a year; he failed to submit to questioning at the merits hearing; and there are no evident circumstances in this case that warrant mitigation.
87. On this point, Claimant maintains that because of the dramatic impact that clomiphene can have on ultra endurance athletes and the short period of time in which Respondent has accumulated two (2) separate ADRVs for testing positive for different, powerful performance enhancing substances, he has demonstrated a blatant disregard for the rules.
88. Claimant argues this is further highlighted by his refusal to submit to the questioning at the merits hearing. Claimant points out that no other athlete competed in the Florida ANVIL Ultra Triathlon 5x event and Respondent has capitalized on his improper advantage by setting a world record, making the violation even more egregious.
89. Claimant contends that while under Code Article 3.2.5, the Arbitrator would be permitted to make an adverse inference based on Respondent's failure to attend the hearing and respond to questions under oath, no such inference is needed given the facts in this case.
90. Finally, Claimant maintains that any competition results for Respondent subsequent to February 20-24, 2024, the date of the Florida ANVIL Ultra Triathlon competition where Respondent tested positive, must be disqualified. This should include the forfeiture of any medals, points and prizes.
91. In sum, Claimant submits that the appropriate sanction in this case is an 8-year period of ineligibility beginning May 30, 2025, along with the disqualification of any competitive results obtained on and after February 20, 2024.

B. Respondent's Position

92. Respondent did not make arguments to the undersigned Arbitrator in writing or in person.

**IX. ANALYSIS AND FINDINGS**

A. Respondent Committed the Anti-Doping Rule Violations Alleged in the Charge Letter Dated July 26, 2024.

93. USADA provided un rebutted evidence that Respondent tested positive for clomiphene based on an in-competition urine sample obtained on February 24, 2024 at the Florida ANVIL Ultra Triathlon. Dr. Pereira testified credibly that Respondent's sample taken during a previous race was collected by the ABCD and was analyzed by the WADA-accredited laboratory in Rio de Janeiro, Brazil, which reported the sample as positive for meldonium and drostanolone, but not clomiphene. Clomiphene was among the substances for which the sample was tested, and no presence of the substance was detected. This undermines Respondent's claim made during the investigation that the instant test was residual from the first ADRV.
94. Dr. Fedoruk, in his expert report and through testimony, established that the WADA-accredited laboratory analysis of the sample obtained on February 24, 2024, was completed in accordance with the requisite international standards. And further, there were no deviations in collection or laboratory standards by either the Brazil or USADA laboratories.
95. Clomiphene is considered a specified substance in the class of Hormone and Metabolic Modulators which is prohibited at all times. Respondent did not have a TUE in place for the substance.
96. Therefore, Respondent committed ADRVs as set forth in Article 2.1 (presence of a prohibited substance or its metabolites) and Article 2.2 (use/attempted use) of the Code.

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

1. *Default Period of Sanction*

97. Pursuant to Article 10.2.1.2 of the Code, where the ADRV involves a specified substance and the anti-doping organization can establish that the ADRV was intentional, the default period of ineligibility for ADRVs under Articles 2.1 and 2.2 is four (4) years.
98. Pursuant to Article 10.2.2 of the Code, if an athlete can establish by a balance of probabilities that an ADRV under Article 2.1 or 2.2 of the Code was unintentional, the period of ineligibility is two (2) years.

## 2. *Period of Ineligibility*

99. This is a second offense for ADRVs. Code Article 10.9.1.1 sets forth the sanctioning framework in such a case. It states:

[T]he period of *Ineligibility* shall be the greater of:

(a) A six month period of Ineligibility; or

(b) A period of *Ineligibility* in the range between:

(i) the sum of the period of *Ineligibility* imposed for the first anti-doping rule violation plus the period of *Ineligibility* otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, [2 yrs + 4 yrs] and

(ii) twice the period of *Ineligibility* otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, [2 x 4 years = 8 yrs] with the period of *Ineligibility* within this range to be determined based on the entirety of the circumstances and the *Athlete* or other *Person's* degree of *Fault* with respect to the second violation.<sup>31</sup> (Emphasis in the original).

100. Hence, the Code dictates that the first step is to determine the lower end of the sanction range by establishing the appropriate sanction for the clomiphene positive test as if it were a first violation. As a specified substance, the default sanction is two (2) years but can be increased to four (4) years if USADA can establish that the use was intentional.
101. I find that USADA has established the use was intentional given that it is Respondent's second ADRV within a year, and he used a potent performance

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<sup>31</sup> Claimant Exhibit 16 at 79.



enhancing drug in the preparation for a competition that led to him setting the world record during the Florida ANVIL Ultra Triathlon. As Claimant points out, success in that event required supreme levels of fitness and endurance predicated upon quick and efficient recovery, which clomiphene is uniquely positioned to provide.

102. Because the instant ADRVs were intentional, the appropriate sanction for the clomiphene positive test is four (4) years.
103. Accordingly, the lower end of the sanction range for this second violation is four (4) years plus the sanction for the IUTA ADRV, which was two (2) years. This makes the lower end of the range equal to six (6) years.
104. The upper end of the sanction range for this second violation is twice the sanction for clomiphene treating it as a first violation, which would be eight years (two times the default period of four years for an intentional violation). Thus, the range for the period of ineligibility is properly set at 6-8 years.
105. Next, Article 10.9.1.1 of the Code continues by requiring an assessment of “the entirety of the circumstances” and Respondent’s “degree of fault with respect to the second violation” to determine the appropriate sanction.
106. In this case, I find eight (8) years is appropriate because Respondent has provided no reasonable or credible explanation for the violation; it is a second offense within a year; it was committed while on suspension from the first ADRV offense; he has demonstrated a manifest disregard for the rules of clean sport; and he capitalized on the violation by obtaining a world record.
107. When an athlete commits a second ADRV while serving a period of ineligibility, Article 10.9.3.4 of the Code requires that “the periods of *Ineligibility* for multiple violations shall run consecutively, rather than concurrently.”<sup>32</sup> Therefore, the appropriate start date for Respondent’s period of ineligibility in this matter is May 30, 2025, the day after his first sanction expires.
108. Article 9 of the Code provides that “[a]n anti-doping rule violation in *Individual Sports* in connection with an *In-Competition* test automatically leads to *Disqualification* of the result obtained in that *Competition* with all resulting *Consequences*, including forfeiture of any medals, points and prizes.”<sup>33</sup> (Emphasis in the original).
109. Additionally, Article 10.10 of the Code is clear that “all other competitive results of the *Athlete* obtained from the date a positive *Sample* was collected

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<sup>32</sup> *Id.* at 82.

<sup>33</sup> *Id.* at 63.

(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.”<sup>34</sup> (Emphasis in the original).

110. The positive test for clomiphene was obtained while Respondent was in-competition at the Florida ANVIL Ultra Triathlon from February 20-24, 2024. The Code requires automatic disqualification of the results from these dates.
111. In this case, fairness does not require that Respondent’s competition results or honors be maintained. In fact, fairness requires just the opposite. For all the reasons that support the finding of an intentional violation, it is concluded that Respondent’s competitive results, including any award of medals, points, and prizes received after February 20, 2024, shall be disqualified.

## **X. AWARD**

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

- A. Claimant met its burden of proving Respondent committed an ADRV under Article 2.1 of the Code for *presence* of clomiphene, a WADA prohibited substance at all times.
- B. Claimant also met its burden of proving Respondent committed an ADRV under Article 2.2 of the Code for the *use* of clomiphene.
- C. This was Respondent’s second ADRV within a one (1) year period which occurred while he was on suspension for the first ADRV. Here, the upper range in line with the calculation required by Code Article 10.9.1.1 for second violation penalties is warranted. Therefore, the period of ineligibility for violations of Articles 2.1 and 2.2 of the Code shall be eight (8) years.
- D. In accordance with Code Article 10.9.3.4, the period of ineligibility shall run consecutively to the period of suspension for the first ADRV and start on May 30, 2025, the day after his first sanction expires.

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<sup>34</sup> *Id.* at 82-83.

- E. Respondent's competitive results, including any award of medals, points, and prizes from February 20, 2024, shall be disqualified.
- F. This Award is in full settlement of all claims submitted in this arbitration. All claims not expressly granted herein are hereby denied.

Dated: January 20, 2025  
Fort Lauderdale, FL

  
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Jeanne Charles, Esq.  
Arbitrator