

**WORLD CONFERENCE  
ON DOPING IN SPORT**  
KATOWICE 2019 | 5-7 NOVEMBER

## SESSION 4

### **2021 World Anti-Doping Code**

Richard Young & Ulrich Haas, Code Drafting Team



# 2021 Code General Overview



- Stakeholders' feedback was that the 2015 Code has worked well
- Unlike prior Code revisions, less stakeholder feedback on major principles and more on practical application
- Tradeoff between complexity and length vs. harmonization and clarity
- How does the 2021 Code address the current elephants in the room?
  - Role of the International Testing Agency (ITA)
  - IAAF and Russian Doping Scandals
  - Positive results from IOC sample re-analysis
  - Prohibited Substances which are also Substances of Abuse
  - Product contamination issues

# Code Drafting and Review Process



## TIMELINE

- **November 2017:** Code Drafting Team formed
- **December 2017 – March 2018:** First Consultation Phase
- **May 2018:** First Draft submitted to WADA Executive Committee
  
- **June 2018 – September 2018:** Second Consultation Phase
- **November 2018:** Second Draft submitted to WADA Executive Committee
  
- **December 2018 – March 2019:** Third Consultation Phase
- **May 2019:** Third Draft presented to WADA Executive Committee
  
- **May 2019 – September 2019:** Continued Stakeholder feedback
- **May 2019:** Fourth Draft submitted to WADA Executive Committee
  
- Continued Stakeholder feedback
- **November 2019:** Fifth Draft submitted for consideration at the World Conference

# Some Numbers



Number of submissions	211 submissions
Public Authorities	26
Sports Movement	47
NADOs/RADOs	73
Others	65
Number of Comments	2035
Meetings/Conference calls of the Code Drafting Team	123
Including Meetings/Conference calls with Stakeholders	68

- Comparing the 2015 Code to the final 2021 Code, 3243 changes were made
- In addition to the four Code drafts submitted to the WADA ExCo and the final fifth draft published on the WADA website in advance of the World Conference, the Code Project Team generated more than 100 interim working drafts

# The Code Drafting Team



- **Ulrich Haas:** Law Professor University of Zurich; Court of Arbitration for Sport (CAS) Arbitrator
- **Sebastien Gillot:** Director, European Office and International Federation Relations, WADA
- **Ben Sandford:** Former New Zealand Olympic Skeleton Athlete, Member of WADA's Athlete Committee; Lawyer
- **Julien Sieveking:** Director, Legal Affairs, WADA
- **Tim Ricketts:** Director, Standards and Harmonization, WADA
- **Liz Riley:** General Counsel, International Paralympic Committee
- **Rich Young:** Lawyer; Lead Drafter of 2003, 2009 and 2015 Codes

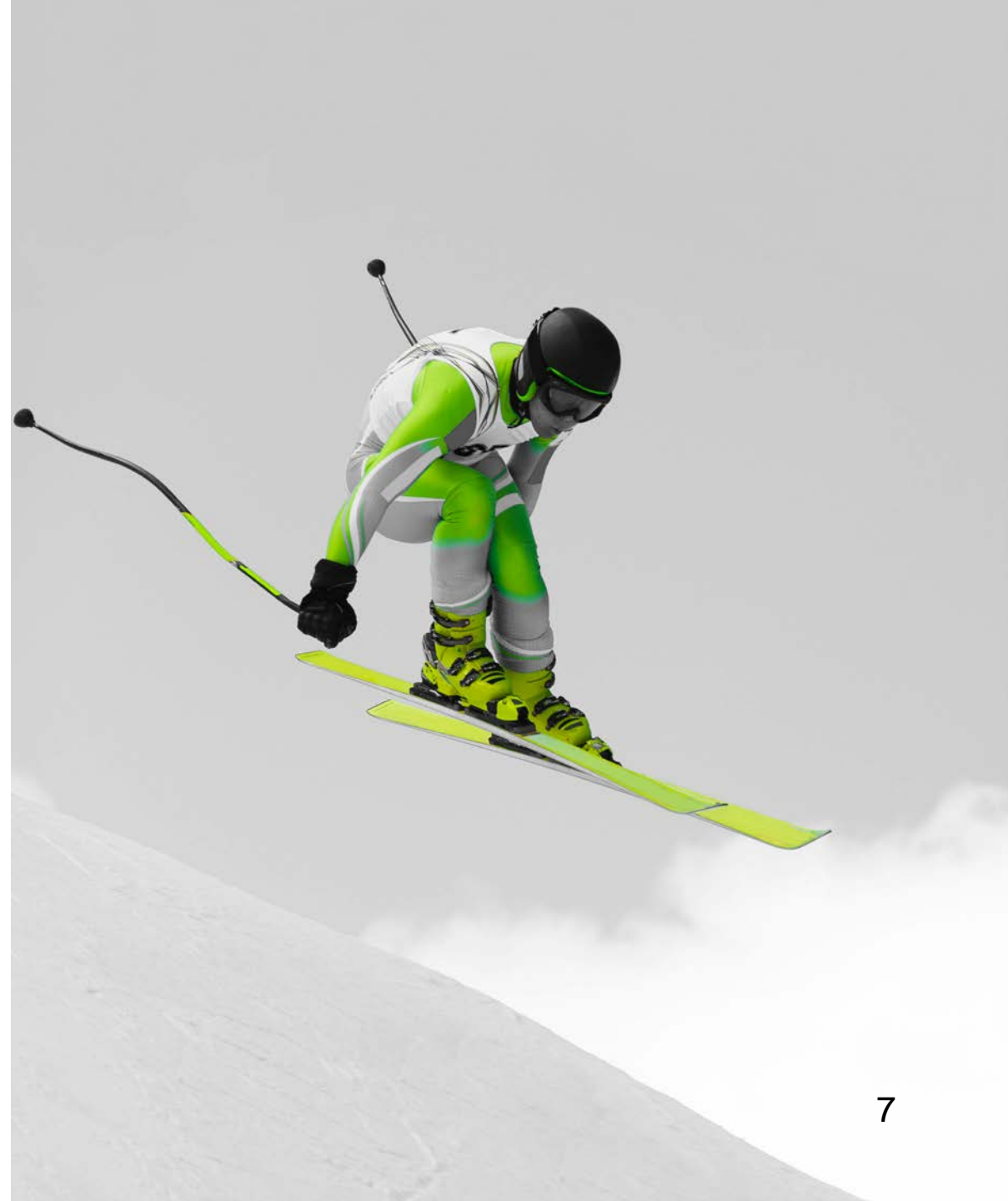
# Delegated Third Party (Introduction and Article 20)



- “Delegated Third Party” is a new defined term
- Signatories are responsible for all aspects of Doping Control but may delegate any or all aspects to Delegated Third Parties
- Signatories remain responsible for ensuring that delegated aspects of Doping Control are performed in compliance with the Code and International Standards
  - Signatories’ contracts with Delegated Third Parties must require that the services provided be in compliance with the Code and International Standards
- Certain officials and employees of Delegated Third Parties must agree to be bound by the Code or comparable Signatory Regulations

# Anti-Doping Rule Violations (Article 2)

- Tampering (Article 2.5)
- “Attempted” Complicity (Article 2.9)
- Prohibited Association (Article 2.10)
- Whistleblower Protection (Article 2.11)





# The Prohibited List and Technical Documents (Article 4)

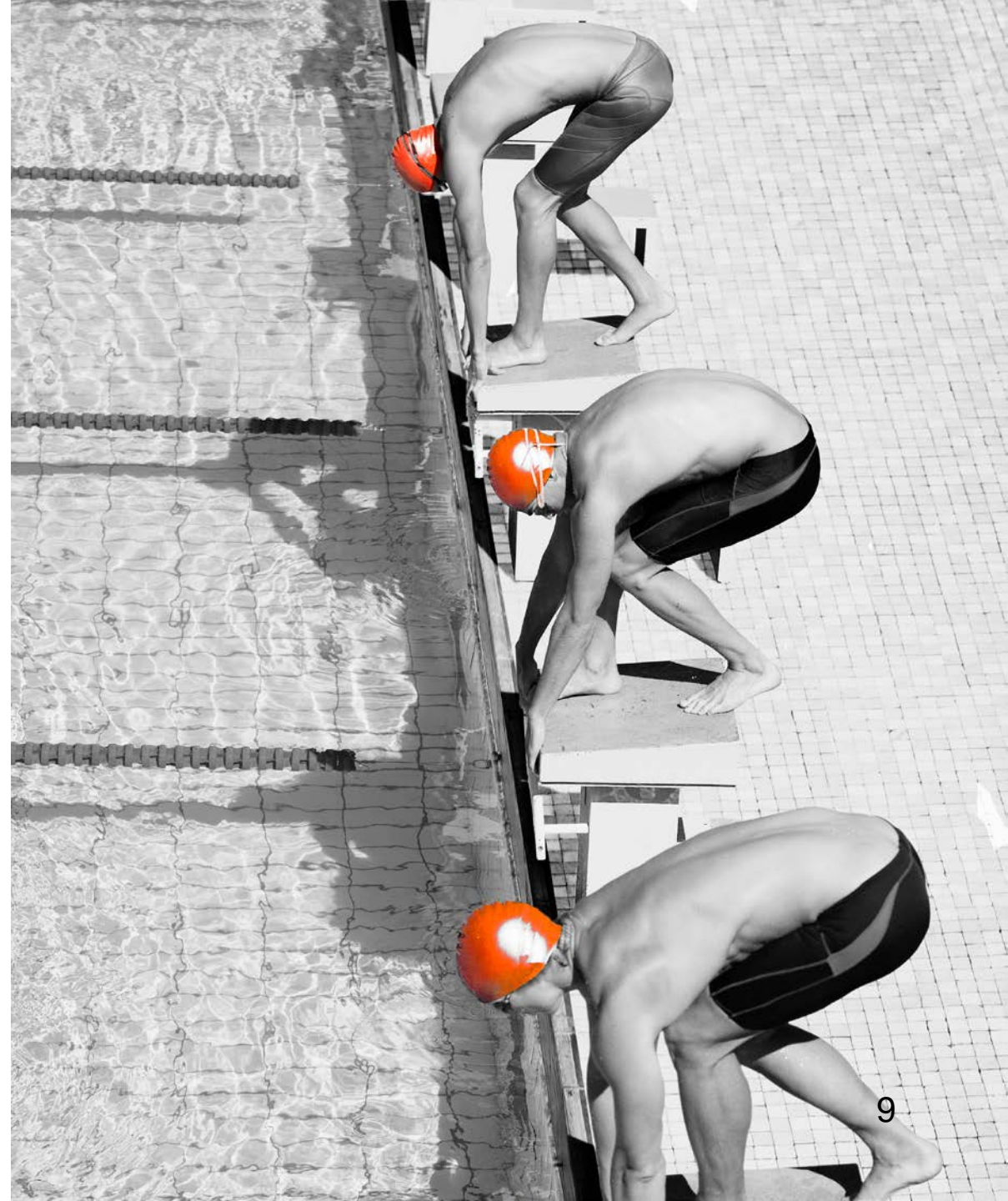
- Atypical Findings
- Threshold Substances (Decision Limits) and certain Non-Threshold Substances (Reporting Limits)
- “Specified Methods”





# WADA's Right to Take Possession of Samples and Data (Article 6.8)

- WADA may, in its sole discretion, at any time, with or without prior notice, take physical possession of any *Sample* and related analytical data or information in the possession of a laboratory or *Anti-Doping Organization*



# Results Management (Article 7)

- Detail moved into the International Standard for Results Management (ISRM). Important principles, particularly those which address relationships between stakeholders, remain in the Code
- WADA may require an Anti-Doping Organization (ADO) to conduct Results Management (Article 7.1.5)
- Decisions by a Signatory (with limited exceptions for Major Event Organizations) are automatically given worldwide effect



# Fair Hearing and Notice of Hearing Decision (Article 8)



- Article 6 (1) of European Convention on Human Rights ensures the right to one adjudicatory instance that complies with the procedural guarantees
- This adjudicatory instance is:
  - **CAS** (for International-Level Athletes or International Events) and
  - the (national) **appellate body** (for all Other Athletes or Other Persons)
- **Further procedural protection** is provided in Article 8.1 of the Code for the first instance, i.e. at a minimum
  - fair hearing
  - within reasonable time
  - fair, impartial and operational independent hearing panel

details in  
ISRM



# Sanctions on Individuals (Article 10) – adding flexibility

- Anti-Doping Rule Violation (ADRV) involving **Substance of Abuse**
  - Ingestion / Use **out of competition** → 3 months (or lower)
  - Ingestion / Use / Possession **in competition**  
+ unrelated to sport performance → not intentional
- ADRV (**evading or refusing sample collection**, Article 2.3), if
  - exceptional circumstances → 2 - 4 years
  - Protected Person / Recreational Athlete → 2 years - reprimand
- ADRV (Presence / Use / Possession)
  - **No Significant Fault + Protected Person or Recreational Athlete**  
(independent of substance involved) → reprimand – 2 years
  - no need to establish how substance entered system



# Sanctions on Individuals (Article 10) (Cont'd)

- Substantial Assistance (**providing information**)
  - resulting in proceedings for non-compliance
  - resulting in proceedings for sport integrity violations
  - exceptional circumstances → lower than  $\frac{3}{4}$  + no publication
- Results Management Agreements (**saving time and costs**)
  - four or more years + early admission + acceptance → 1 year off
  - Case Resolution Agreement → discretion of WADA + ADO
- New Formula for **2nd ADRV** (in most cases range)
- Tampering in connection with Doping Control Process for an underlying asserted ADRV → stand-alone 1st violation





# Sanctions on Individuals (Article 10) (Cont'd)

- Aggravating circumstances  
+ knowingly committed ADRV → Add up to 2 years
- No longer credit for Prompt / Timely Admission
- Multiple Violations before first notification
  - if 12 months or more between them → stand-alone 1st violation
- Breach of Provisional Suspension → no credit for any period served  
+ disqualification of results

# Appeals (Article 13)

- Strengthening of principle that the scope of review before CAS is not limited
- Strengthening of principle that CAS shall not give deference to lower instance
- Strengthening the independence of national appellate bodies
  - Must be **operationally and institutionally independent**
  - **Otherwise Athlete can go directly to CAS**
- Better coordination of parties entitled to appeal to CAS (duty to notify)





# Implementation of Decisions (Article 15)

- Decisions by Signatory, national appellate body or CAS have *erga omnes* effect (binding on every Signatory in every sport)
  - **Provisional Suspension:** automatically prohibits participation in all sports during Provisional Suspension
  - **Ineligibility:** automatically prohibits participation in all sports during period of ineligibility
  - **Accepting an ADRV:** automatically binds all Signatories
  - **Disqualification:** automatically disqualifies all results obtained within the authority of any Signatory during the specified period
  - **Suspension or lifting Consequences:** is binding on all Signatories (upon notice)

# Authority of IOC, IPC, IFs, NOCs and Other MEOs to Discipline Their Members (Article 12)



- Discipline may include the possibility of excluding members from participating in specified future events
- Each organization shall adopt rules requiring its members to implement, uphold and enforce the Code within that organization's area of competence. Obligation to take action against members when a member's non-compliance is discovered
- However, no affirmative duty to actively monitor members' Code compliance

# Education (Article 18)

- “Education” has been made a defined term in the Code
- Detail previously included in Article 18 has been moved to the International Standard for Education





## Obligation of Specified Signatory Representatives to Agree to be Bound by the Code or Comparable Signatory Rules and Regulations (Articles 20.1.7, 20.2.7, 20.3.4, 20.4.8, 20.5.10, 20.6.5 and 20.7.12)



- Subject to applicable law, as a condition of such position or involvement, to require all of its board members, directors, officers, and those employees (and those of appointed Delegated Third Parties), who are involved in any aspect of Doping Control, to agree to be bound by anti-doping rules as *Persons* in conformity with the *Code* for direct and intentional misconduct, or to be bound by comparable rules and regulations put in place by the *Signatory*.

## Obligation of Signatories to Not Knowingly Employ Individuals Who Have Been Involved in Doping Control Activities (Articles 20.1.8, 20.2.8, 20.3.5, 20.4.9, 20.5.11, 20.6.6, 20.7.13)



- Subject to applicable law, to not knowingly employ a *Person* in any position involving *Doping Control* (other than authorized anti-doping *Education* or rehabilitation programs) who has been *Provisionally Suspended* or is serving a period of *Ineligibility* under the Code or, if a *Person* was not subject to the Code, who has directly and intentionally engaged in conduct within the previous six years which would have constituted a violation of anti-doping rules if Code-compliant rules had been applicable to such *Person*.



## Independence of NADOs in Their Operational Decisions and Activities (Article 20.5)

- No individual who is involved in the operational decisions or activities of a NADO may, at the same time, be involved in the management or operations of any International Federation, National Federation, Major Event Organization, National Olympic Committee, National Paralympic Committee, or government department with responsibility for sport or anti-doping.

# Signatories' Expectations of Governments Clarified and Expanded (Article 22)



- Clarification – governments are not bound by the Code or the Signatories' "expectations". They are only bound by the UNESCO Convention and other international instruments. The word "shall" is replaced with the word "should" to describe each of the eleven subsections of Article 22 which set forth the Signatories' expectations.

# Signatories' Expectations of Governments Clarified and Expanded (Article 22) (Cont'd)



Additional expectations of the Signatories have been added including:

- **22.2** Access for doping control officials and unrestricted transport of urine and blood samples
- **22.3** The expectation that governments should adopt rules to discipline officials and employees for engaging in conduct which would have violated the Code had the Code been applicable to those Persons
- **22.4** The expectation that governments not allow anyone to be involved in a doping control, sport performance or medical care in a sport setting who is serving a period of ineligibility or who in the previous 6 years has engaged in conduct which would have been a Code violation
- **22.9** The expectation that governments should not limit or restrict WADA's access to any doping samples or anti-doping records or information held or controlled by any Signatory, member of a Signatory or WADA-accredited laboratory



## How Does a Sport Organization Become a Signatory? (Article 23.1)

- Sports Organizations recognized by the Olympic Movement sign a declaration of acceptance or other form of acceptance approved by WADA
- Other entities having significant relevance in sport may apply to WADA under a new policy established by WADA





# Code Compliance (Article 24)

- Full detail is found in the International Standard for Code Compliance by Signatories. Critical Principles which can only be changed by Code amendment are found in Article 24
  - Obligation to comply with the Code and International Standards
  - Compliance reporting obligations
  - Potential consequences of non-compliance are specifically identified
  - Process for resolving disputes involving allegations non-compliance and resulting consequences
  - Decisions involving disputed allegations of non-compliance by WADA are made by CAS

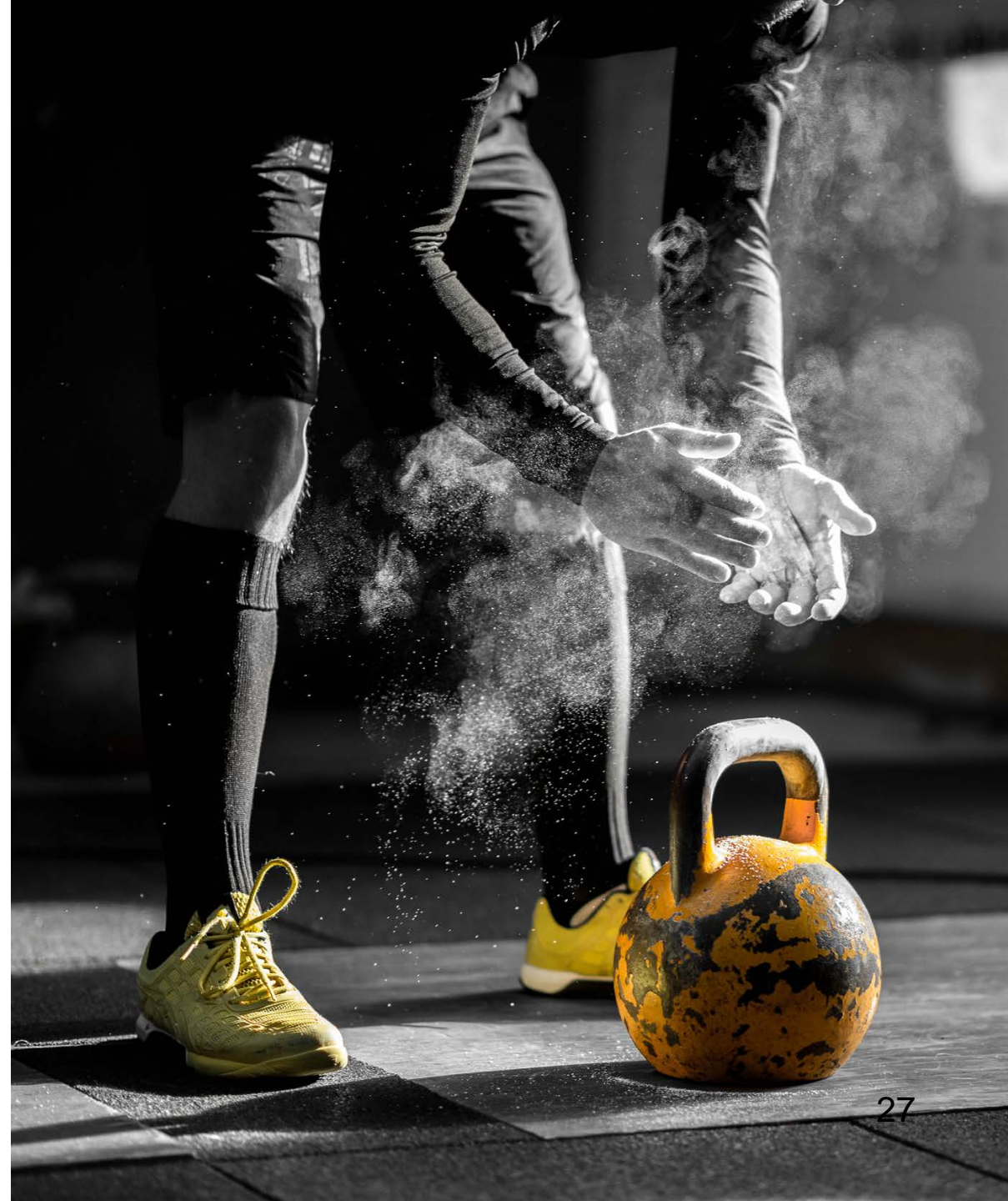
## Other Uses of Analytical Test Results and Anti-Doping Data (Articles 6.4 and 23.2)



- Research, with consent of the Athlete, not traceable back to an Athlete
- Method development, quality assurance and establishing reference populations not traceable back to an Athlete (generally not considered “research”)
- Identification of permitted substances either alone or in combination with other permitted substances which should be considered for the Monitoring List or Prohibited List, not traceable back to an Athlete
- Test Results specific to a particular Athlete where there are non-doping consequences, (e.g. safety rules or Code of Conduct violations) or monitoring eligibility relating to applicable transgender policies

# Code Definition of In-Competition

- ***In-Competition***: The period commencing at 11:59 p.m. on the day before a *Competition* in which the *Athlete* is scheduled to participate through the end of such *Competition* and the *Sample* collection process related to such *Competition*. Provided, however, *WADA* may approve, for a particular sport, an alternative definition if an International Federation provides a compelling justification that a different definition is necessary for its sport; upon such approval by *WADA*, the alternative definition shall be followed by all *Major Event Organizations* for that particular sport.





# Protected Persons, Recreational Athlete and Minors (Code Definitions)



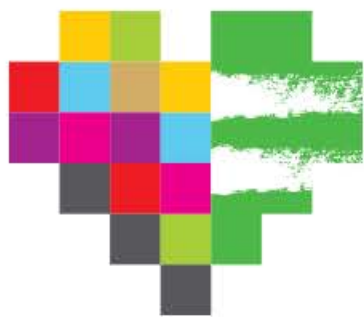
- **Minor:** A natural *Person* who has not reached the age of eighteen years.
- **Protected Person:** An *Athlete* or other natural *Person* who at the time of the anti-doping rule violation: (i) has not reached the age of sixteen years; (ii) has not reached the age of eighteen years and is not included in any *Registered Testing Pool* and has never competed in any *International Event* in an open category; or (iii) for reasons other than age has been determined to lack legal capacity under applicable national legislation.
- **Recreational Athlete:** A natural *Person* who is so defined by the relevant *National Anti-Doping Organization*; provided, however, the term shall not include any *Person* who, within the five years prior to committing any anti-doping rule violation, has been an *International-Level Athlete* (as defined by each International Federation consistent with the *International Standard for Testing and Investigations*) or *National-Level Athlete* (as defined by each *National Anti-Doping Organization* consistent with the *International Standard for Testing and Investigations*), has represented any country in an *International Event* in an open category or has been included within any *Registered Testing Pool* or other whereabouts information pool maintained by any International Federation or *National Anti-Doping Organization*.

# Flexibility in Sanctioning Protected Persons and Recreational Athletes



- More flexible sanctioning rules are applied to Protected Persons and Recreational Athletes including:
  - a) No requirement to establish how a Prohibited Substance entered the Athlete's system to benefit from the No Significant Fault or Negligence rule (Definition of No Significant Fault or Negligence)
  - b) Article 10.5.1.3 minimum sanction is a reprimand when No Significant Fault is established
  - c) Article 14.3.7 Public Disclosure not mandatory
- Flexibility in Sanctioning Minors who are not Protected Persons or Recreational Athletes
  - a) Article 14.3.7 Public Disclosure not mandatory





play true