



ITA

KEEPING SPORT REAL

Legal Aspects of Running an ABP case

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1. ITA - Overview

Legal form

- ✓ An international organization
- ✓ Not-for-profit foundation
- ✓ Under Swiss law

Objectives

- ✓ Guarantee **independent processes** and **transparency**
- ✓ Foster and centralize **expertise**
- ✓ Ensure **compliance** of stakeholders
- ✓ **Harmonize** processes and ensure **equal treatment**



Education



Testing



Science & Research



ADAMS Management



Athlete Biological Passport



Compliance



Intelligence



Results Management



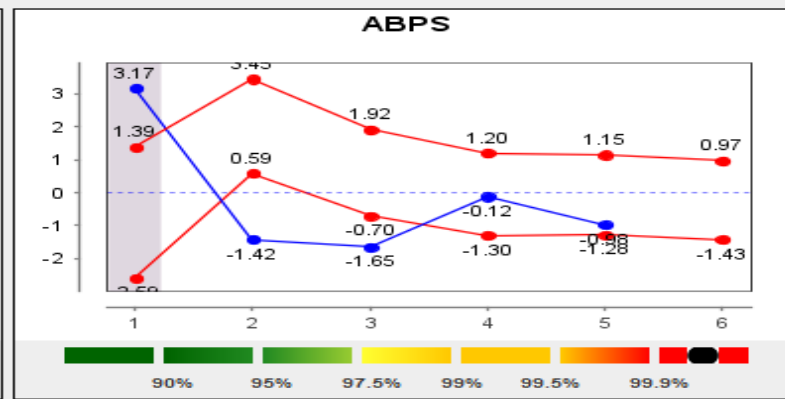
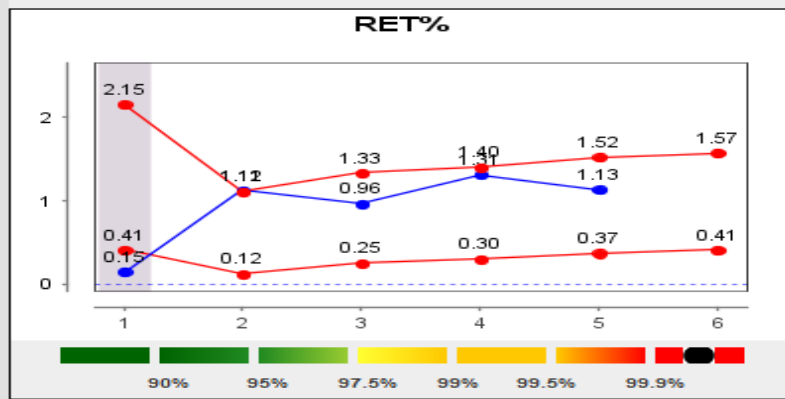
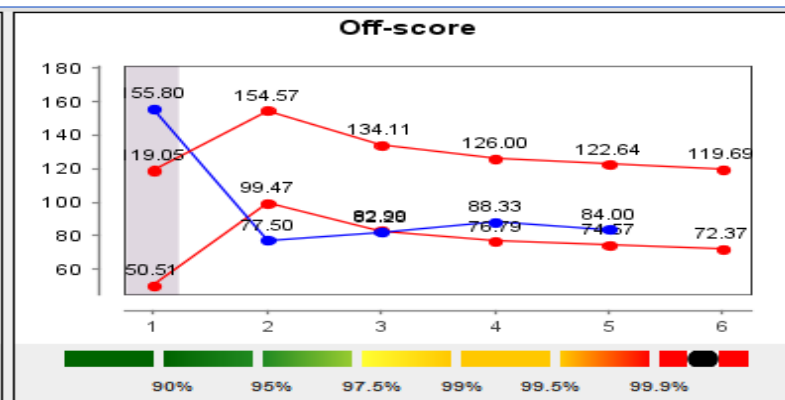
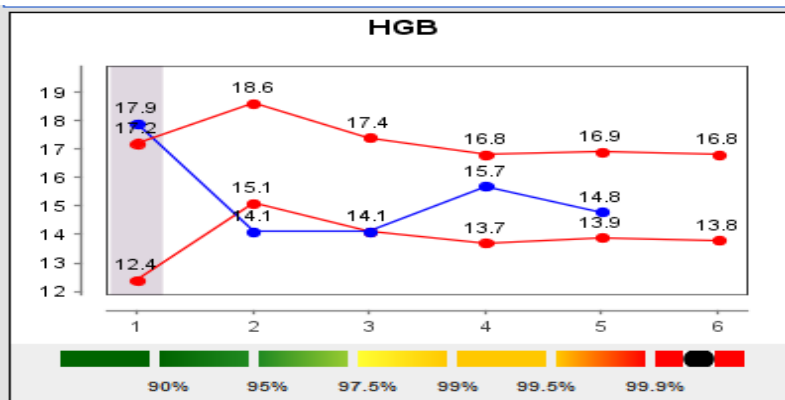
Therapeutic Use Exemptions (TUEs)

2. ADRV for Use

ADRV for Use 2.2 WADC

Art. 2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

Comment to Article 2.2: It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Athlete Biological Passport, or other analytical information which does not otherwise satisfy all the requirements to establish "Presence" of a Prohibited Substance under Article 2.1. [...]



A Decade of Consistent CAS Case law

- Numerous CAS decisions upholding the ABP as reliable evidence of doping



3. Results Management: Steps

Results Management: Steps

1. Review of the APF and ABP Documentation Package
2. Notification of the APF to the Athlete (Initial Statement)
3. Athlete's Explanations
4. Experts' Review
5. Assertion (or not) of the ADRV (Final Statement)
6. Sanction & Consequences requested
7. Acceptance of Consequences – Proposal
8. Disciplinary Proceedings
9. Appeal
10. Reset

1. Adverse Passport Finding & Initial Statement

- **Consensus** from **Expert Panel** that, considering the information within the Passport at this stage,;

“ it is likely that a Prohibited Substance and/or Method has been used, and [highly] unlikely that it is the result of any other cause”

1. Review of the APF, Initial Statement and ABP Documentation Package

- Understand content and extent
 - Main abnormalities
 - Full doc pack vs certificates
 - Additional ABP samples /Urine Sample?
 - Samples included vs excluded
 - Whereabouts filings
 - Intelligence gathering: entourage, suspicious behavior, etc.

2. Notification of the APF (confidential)

- Athlete is notified that ADO “is considering the assertion of an ADRV”
 - Potential “Use of Prohibited Substance and/or Methods” (art. 2.2 WADC)
 - ABP Documentation provided
 - Reasonable delay is granted to provide explanation
 - Opportunity to accept provisional suspension (and admit)
 - WADA and NADO with whom there is a sharing agreement are notified

3. Athlete's Explanation

➤ Different Approaches:

1. Medical explanation (anaemia, accident, malaria, pregnancy, etc)
2. Physiological explanation (high altitude native, training conditions, etc.)
3. Preanalytical and analytical requirements /procedural defects allegations
 - Challenge Inclusion/Exclusion of Samples (ADAMS vs Experts' assessment)
 - Typos, apparent inconsistencies between documentation related to reliability of the analysis, storage, T°, etc.
 - Sample collection deviation
4. Delaying tactics (Asking for the B-sample analysis and every documentation packages)

Burdens and Standards of Proof

- Presumption in favor of laboratories (3.2.2 & 3.2.3 WADC)
- Therefore => samples validity is presumed.
- Athlete has the burden of proof:
 1. to establish the departure; and
 2. that such departure could reasonably have caused the ADRV
- Athlete: balance of probabilities (3.1 WADC in fine)
- ADO: comfortable satisfaction

4. Experts' Review of the explanation

- Athlete's case file is sent back to APMU/Experts

5. Assertion of the ADRV: Final Statement

- Final Statement whereby Experts **unanimously** confirm that it is “ *[highly] likely that the Athlete used a prohibited substance or a prohibited method and that it is [highly] unlikely to find that the passport abnormal assuming any other cause.*”
 - Athlete is notified of the assertion of the ADRV (art. 2.2)
 - Provisional Suspension (7.9.1 WADC)
 - Opportunity to provide substantial assistance and admit
 - Notification of WADA, NADO, National Federation, Public

5. Assertion of the ADRV (or not) (confidential)

- Final Statement whereby Experts cannot reach an unanimous opinion or agree with the Athlete's alternative explanation
 - Athlete is informed that case will not proceed
 - WADA and NADO informed
- Follow up on ABP to build up case against Athlete (further target testing or investigation)

6. Sanction & Consequences requested

- 4-year ban (art. 10.2.1.1 WADC)
- Disqualification (art.10.8 WADC)
- Fine, fees

6. Disqualification Art. 10.8 WADC

*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*

- “Start Date” of the ADRV: 1st sample of the profile vs. 1st abnormality
- Throughout or partly: doping scheme only and/or between the gaps?
- Fairness & Proportionality

7. Acceptance of Consequences (art. 8.3 WADC)

- Terms for sanction & consequences proposed to Athlete
- Possibility to reduce ban based on prompt admission (art. 10.6.3 WADC)
- Reduce time-treatment and costs

8. Disciplinary Proceedings

- ADO initiates disciplinary proceedings before:
 - First instance hearing panel;
 - Directly to CAS (art. 8.5 WADC)
- Athlete has the opportunity to file a “new” defense

8. ADO's Prosecution

- ✓ Explaining the ABP
 - CAS caselaw
 - Expert Panel testimony and additional expertise

- ✓ Rebutting Alternative Scenarios
 - Battle of the Experts on specific issue (pathology)
 - Independent opinion on samples validity

- ✓ Adducing evidence to establish a "Doping Scenario" +
 - Competition schedule / targeted events
 - Intelligence
 - Whereabouts failures
 - Diluted Samples
 - Entourage, past ADRVs
 - Etc.

9. Appeal to CAS

- Case is heard de novo

10. ADRV is confirmed

- ABP profile is to be “re-setted”

Thank you!

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