



INTELLIGENCE AND INVESTIGATIONS DEPARTMENT

**SUMMARY OF THE REVIEW OF THE USADA ‘NIKE
OREGON PROJECT’ INVESTIGATION**

05 October 2021



**WORLD
ANTI-DOPING
AGENCY**

1 INVESTIGATION SUMMARY

Background

On 9 June 2017, following investigations into the Nike Oregon Project (**NOP**), the United States Anti-Doping Agency (**USADA**) charged Alberto Salazar (**Mr Salazar**) and Doctor Jeffrey Brown (**Doctor Brown**) with multiple Anti-Doping Rule Violations (**ADRVs**) alleged to have occurred between 2009 and 2017.

The USADA investigation was triggered by a cooperating witness (**Witness "A"**), who, after receiving an 'over-the-limit' L-carnitine Infusion from Doctor Brown (organized by Mr Salazar), reported the event to USADA.

At the material time, intravenous infusions or injections greater than 50 milliliters per 6-hour period were prohibited and constituted the Use of a Prohibited Method.¹

A significant part of the USADA case centered on an allegation that Doctor Brown, under direction from Mr Salazar, had administered over-the-limit L-carnitine Infusions to NOP athletes.

On 30 September 2019, during a first instance hearing, the American Arbitration Association, North American Court of Arbitration for Sport (the "**AAA**") ruled that Mr Salazar and Doctor Brown had committed several violations including: (i) Administration of an over-the-limit L-carnitine Infusion to Witness "A"; (ii) Possession (Salazar) and Trafficking (Brown) of Testosterone arising from an experiment (the "**Testosterone Experiment**") conducted by Mr Salazar on the detectability of Testosterone following a sabotage event;² and (iii) Tampering with the Doping Control process and the medical records of NOP athletes.

All parties appealed to the Court of Arbitration for Sport ("**CAS**").

Notably, the AAA also ruled that other than Witness "A", no other person had received an over-the-limit L-Carnitine Infusion. Consequently, USADA advised

¹ Per World Anti-Doping Code 2012 Prohibited List, M2(2) (Chemical and physical Manipulation).

² Mr Salazar conducted an experiment around July 2009 in which he applied testosterone gel to his sons and subsequently had their urine tested to determine their testosterone levels, including whether they

WADA that because of this finding, it would not take action against any NOP athlete for receiving an L-carnitine Infusion from Doctor Brown.

On 12 December 2019, following a request from WADA's Executive Committee, WADA Director General, Olivier Niggli, asked the Intelligence and Investigations Department to review USADA's NOP investigation to ensure USADA had exhausted all reasonable endeavors to identify and establish potential Anti-Doping Rule Violations against those involved in the NOP (the "**Review**").

On 24 September 2021, following an appeal hearing, CAS ruled that Mr Salazar, and Doctor Brown had committed the following ADRVs:

Mr Salazar

1. Complicity in Doctor Brown's administration of a Prohibited Method (the L-carnitine Infusion) to Witness "A".
2. Tampering with the Doping Control Process with respect to the issue of L-carnitine infusions.
3. Possession of Testosterone, namely the Testosterone used in the Testosterone Experiment.

Doctor Brown

1. Tampering with the Doping Control Process with respect to the issue of L-carnitine infusions.
2. Administration of a Prohibited Method, namely the L-carnitine Infusion to Witness "A".
3. Trafficking of testosterone to Mr Salazar in relation to the Testosterone Experiment.
4. Complicity in Mr Salazar's possession of Testosterone, namely the Testosterone used in the Testosterone Experiment.

Mr Salazar and Doctor Brown were sanctioned with a four-year period of ineligibility.

Like AAA, CAS ruled that Witness "A" was the only person at the NOP to have received an over-the-limit L-carnitine Infusion.

exceeded the WADA threshold. According to Mr Salazar, the purpose of this experiment was to test whether NOP athletes could be sabotaged if a person sought to apply testosterone gel to them without their knowledge.

CAS also observed in respect of the USADA investigation, that the evidence presented *"seem[ed] out of proportion to the nature and gravity of the offences found to have been committed"*.³

1.1 THE REVIEW

The Review examined over two 2,000 pages of material including USADA's case file (its 1,131 exhibits), appeal briefs, investigator case notes, hearing transcripts and the Final Awards of both AAA and CAS (collectively, the **"USADA Holdings"**).

The USADA Holdings contained information relating to 35 Athletes and seven Athlete Support Persons (excluding Mr Salazar and Doctor Brown) – a total of 42 persons of interest.

The Review examined the circumstances of all 42 persons of interest, including the investigations conducted by USADA.

The Review included engagement with USADA by way of correspondence and a 'virtual' meeting.

The Review is satisfied that USADA has exhausted all reasonable endeavours to identify and establish violations against those involved in the NOP.

Excluding Mr Salazar, Doctor Brown and Witness "A", the Review asserts there is insufficient evidence to warrant violation proceedings against any other person.

On 04th of October 2021, the Review wrote to USADA and said:

The purpose of the Review was not to pass judgement on the efficacy of USADA's investigative abilities but to ensure that all avenues have been exhausted for identifying potential Anti-Doping Rule Violations against relevant parties.

To this end, the Review is satisfied that USADA has exhausted all reasonable endeavours to identify and establish potential violations against those involved in the Nike Oregon Project.

³ At paragraph 488.

⁴ Code Article 10.6.1.2 empowers WADA in "exceptional circumstances" to suspend the period of ineligibility and other consequences for Substantial Assistance greater than those otherwise provided, including no period ineligibility.

The Review acknowledges that considering the findings made by the Court of Arbitration for Sport in the proceedings against Alberto Salazar and Doctor Jeffrey Brown, regarding the administration of L-carnitine infusions (and injections), there is insufficient evidence to warrant Anti-Doping Rule Violation proceedings against persons other than [Witness "A"]. The Review notes the observations made by the Panel in respect of [Witness "A"].

1.2 APPLICATION TO ELIMINATE CONSEQUENCES OF ADRVS

On 21 March 2018, by written application (the **"Application Letter"**), USADA sought agreement from WADA to eliminate or greatly reduce the sanctions that may be imposed upon athletes who had received an over-the-limit L-carnitine Infusions from Doctor Brown but were cooperating with the USADA investigation.⁴ This included Witness "A".

It was USADA's view of the evidence that while Mr Salazar and Doctor Brown knew that the infusions were over-the-limit and violated the rules, the *"cooperating witnesses"* did not and were, therefore, not *"personally culpable for having knowingly received a Prohibited Method"*. USADA said the complete or partial elimination of consequences were needed to *"reward the substantial assistance of the cooperating witnesses and incentivize other potential witnesses"*.

WADA's Legal Affairs Department (**WADA Legal**) advised USADA that it would not make a final determination on any suspension or elimination of consequences until after the conclusion of the proceedings against Mr Salazar and Doctor Brown, and any applicable violations had been formerly asserted against the relevant parties.⁵ WADA Legal reasoned that it would be then better placed to assess the assistance of a cooperating witness at the end of any relevant proceedings.

USADA had specifically sought the total elimination of any consequences on behalf Witness "A", and three other witnesses (**Witnesses "B", "C" and "D"**) -

⁵ Code Article 10.7.1.2 stipulates that Substantial Assistance provisions can only be triggered if an Anti-Doping Rule Violation has been committed or has been asserted. Prior to this event WADA cannot agree to the suspension of an otherwise applicable period of ineligibility or consequences.

all of whom USADA described as “cooperating witnesses”.

The Review accepts Witness “A” materially assisted the USADA investigation of Mr Salazar and Doctor Brown. However, the content of USADA’s application for elimination of consequences on behalf of Witnesses “B”, “C” and “D” was problematic in that it caused some uncertainty to the Review as to how these witnesses substantially assisted in the discovery or establishment of a violation against Mr Salazar or Doctor Brown.

The Application Letter said that Witnesses “B”, “C” and “D” had material evidence, and that they had been administered over-the-limit L-carnitine Infusions by Doctor Brown. However, as detailed below, the evidence of these witnesses did not appear to assist the discovery or establishment of any violation.

Witness “B”

Witness “B” said they were proactive on the issue of the volume of the L-carnitine Infusion and satisfied themselves prior to its administration that the volume was less than 50 millilitres (mL), this being the permissible threshold. Moreover, Doctor Brown had confirmed to Witness “B”, in person and email, that the infusion was 45 mL.

Witness “C”

Witness “C” told USADA they had “never seen or heard” of any NOP athlete getting an intravenous infusion. Witness “C” had, however, received an “injection” of L-carnitine from Doctor Brown in 2012. However, this injection was 40 mL and, therefore, below the 50 mL permissible threshold. Notably, the medical records of Witness “C”, which USADA possessed, reported that the injection was 40 mL in volume.

Witness “D”

Witness “D” recalled receiving an L-carnitine Infusion from Doctor Brown but did not know its volume. That said, Mr Salazar had told Witness “D” at the time that the infusion would be “less than 50 mL”. In other words, below the permissible threshold.

1.2.1 Conclusion

The Application Letter would have benefited from the disclosure of the strength and weaknesses of the evidence of each cooperating witnesses.

The decision by WADA Legal to not make a final determination on any elimination and/or suspension of consequences until after the conclusion of the proceedings against Mr Salazar and Doctor Brown, and the assertion of a violation against the respective athletes did not adversely impact the USADA case.

1.3 WITNESS “A”

On 10 December 2012, Witness “A” contacted USADA and reported the use of L-carnitine Infusions on NOP athletes. Witness “A” later provided an affidavit to USADA in which he admitted his Use of a Prohibited Method, namely, an over-the-limit infusion.

In early 2013, USADA commenced investigation of the information from Witness “A”.

On 21 March 2018, USADA sought agreement from WADA for a total elimination of consequences for the ADRV committed by Witness “A”.

On 1 November 2019, WADA Legal encouraged USADA to charge Witness “A” with the Use of a Prohibited Method prior to the expiration of the statute of limitations. More specifically, WADA Legal stated:

“We feel USADA must charge [Witness “A”] with an ADRV(s) prior to the expiration of the statute of limitations. Pursuant to the Code, it is necessary for signatories to diligently pursue all ADRVs and it is important to establish the ADRV in case [Witness “A”] commits another violation (so that the multiple violation regime applies). Further, in case it transpired in the future that, for example, [Witness “A”] had not given all information on ADRVs, had given inaccurate evidence/testimony or refused to co-operate in the appeal proceedings (if any), the substantial assistance suspension would be reversed so there would need to be a sanction to fall back on. Once [Witness “A”] is charged and WADA gets a chance to review the case file, WADA can consider a potential suspension of the sanction USADA imposes”.

Anti-Doping Organisations are required to promptly notify an athlete of any alleged violation once it is satisfied that the ADRV occurred. Moreover, ADRVs must be prosecuted in a timely manner.⁶

In March 2021, still without having been charged, Witness "A" appeared as a cooperating witness before CAS.

In relation to Witness "A", CAS said:⁷

"In the course of the hearing, information came to light that [Witness "A"] did not have a cooperation agreement with USADA and that, although one had been proposed, it was not finalized. [Witness "A"], although initially legally represented, *did not have legal representation at that time. USADA was aware that this was the case but did not provide [Witness "A"] formal protection from further action.* The Panel assumes that, as a responsible body, USADA would not take any action against [Witness "A"], for example with respect to any ADRV, nor assist any other person or body to do so. This Panel holds very serious concerns that issues of procedural fairness, at the least, could arise."

As at the date of this report, USADA have not charged Witness "A".

USADA's decision not to charge Witness "A", and any implications that may arise from such decision, are matters of current consideration by WADA Legal and WADA's Compliance, Rules and Standards Departments. These matters were not considerations of this investigation.



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⁶ Per 2015 Code, Article 7.7; and 2021 Code, Article 7.2 and International Standard for Results Management, Article 4.2 (Timeliness).

⁷ At paragraph 485.