

INTERNATIONAL OLYMPIC COMMITTEE

IOC DISCIPLINARY COMMISSION

DECISION

**REGARDING VASYL FEDORYSHYN
BORN ON 31 MARCH 1981, UKRAINE, ATHLETE, WRESTLING**

(Rule 59.2.1 of the Olympic Charter)

Pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (the “**Rules**”) and, in particular but without limitation, Articles 2, 5.1, 7.3.3, 8 and 9 thereof:

I. FACTS

1. Vasyl FEDORYSHYN (hereinafter the “**Athlete**”), participated in the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”).
2. On 19 August 2008, the Athlete competed in the Men’s 55-60 kg Freestyle wrestling event (1/8 Final, Quarterfinal, Semifinal and Final) in which he ranked 2nd and for which he was awarded a silver medal.
3. On the same day, the Athlete was requested to provide a urine sample for a doping control. Such sample was identified with the number 1844965.
4. The A-Sample 1844965 was analysed during the 2008 Olympic Games by the WADA-accredited Laboratory in Beijing. Such analysis did not result in an adverse analytical finding at that time.
5. After the conclusion of the 2008 Olympic Games, all the samples collected upon the occasion of the 2008 Olympic Games were transferred to the WADA-accredited “Laboratoire suisse d’analyse du dopage” in Lausanne, Switzerland (“the **Laboratory**”) for long-term storage.
6. The IOC decided to perform further analyses on samples collected during the 2008 Olympic Games. These additional analyses were notably performed with improved analytical methods using more sensitive equipment and/or searching for new metabolites in order to possibly detect Prohibited Substances which were not identified by the analysis performed at the time of the 2008 Olympic Games.
7. In accordance with the provisions of the applicable International Standards for Laboratories (the “**ISL**”), the IOC decided that the reanalysis process would be conducted as follows:
 - An initial analysis was to be conducted on the remains of the A-samples
 - If such initial analysis resulted in the indication of the potential presence of a Prohibited Substance or its Metabolites or Markers (“Presumptive Adverse Analytical Finding” - PAAF), the full confirmation analysis process (double confirmation) was to be conducted on the B-Sample, which would be split for the occasion into a B1- and a B2 Sample (becoming thus the equivalent of an A- and B-Sample).
8. The decision to proceed based on split B-samples was made in principle for all the re-analysis.

9. This choice was made in view of the fact that during the transfer of the samples from the Beijing laboratory to the Laboratory, the A-Samples were not individually resealed nor transported in sealed containers.
10. At that time, resealing of A-Samples (or transport in sealed containers) was not a requirement pursuant to the applicable ISL (2008).
11. However, it was felt that the option to rely on the B-Sample constituted an additional precaution securing the strength and reliability of the analytical process.
12. A similarly precautionous approach was adopted with regard to the implementation of the analytical process and notably of its first phase (opening and splitting of the B-Sample into a B1- and B2-Sample, sealing of the B2-Sample and analysis of the B1-Sample).
13. Pursuant to the ISL, the presence of the Athlete is not a requirement for this first phase of the B-Sample analysis.
14. The IOC nevertheless decided, once again as a matter of principle, that, whenever this was practically possible, the Athlete would be offered the opportunity to attend the above described first phase of the B-sample procedure.
15. The remains of the A-Sample of the Athlete were subject to initial analysis. Such analysis resulted in a Presumptive Adverse Analytical Finding (“**PAAF**”) as it indicated the potential presence of a Prohibited Substance: dehydrochlormethyltestosterone (turinabol).
16. On 11 July 2016, the Athlete through his NOC was informed of the PAAF and of the possibility to attend the opening and splitting of the B-Sample into a B1- and B2-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample. The Athlete was granted a deadline until 14 July 2016 to return the PAAF Notification Appendix.
17. On 12 July 2016, the IOC was informed that an IF representative would attend the opening and splitting of the B-Sample and the sealing of the B2-Sample.
18. On 15 July 2016, the IOC granted the Athlete an additional deadline until 18 July 2016 to return the PAAF Notification Appendix. The Athlete was advised that the opening, splitting of the B-Sample, sealing of the B2-Sample and analysis of the B1-Sample would be conducted in any event between 19 and 26 July 2016.
19. In the same communication, the Athlete was advised that in accordance with Art. 7.3.3 of the Rules, notice to an athlete might be accomplished by delivery of the notice to the NOC and that therefore the previous correspondences were deemed notified to him. The Athlete was also informed that the opening and splitting of the B-Sample, resealing of the B2-Sample and analysis of the B1-Sample would take place even if he chose not to attend or he did not respond. He was reminded that in that case, the opening and splitting of the B-Sample and the sealing of the B2-Sample would be attended by an independent witness.
20. On the same day, the NOC was requested by the IOC to confirm that the Athlete had been informed of the communications addressed to him on 12 and 15 July 2016.
21. The Athlete did not reply.

22. On 21 July 2016, the Athlete was advised through his NOC that the process would take place on 25 July 2016 in the presence of an independent witness and of an IF representative. The Athlete was reminded of the content of Art. 7.3.3 of the Rules.
23. The opening and splitting of the B-Sample, the sealing of the B2-Sample occurred on 25 July 2016 at the Laboratory.
24. The Athlete did not attend the opening and splitting of the B-Sample and was not represented on this occasion.
25. As provided in the ISL, the opening and splitting was attended by an independent witness.
26. On the same day, i.e. 25 July 2016, the Athlete informed the IOC that the letters dated 11 July 2016, 15 July 2016 and 21 July 2016 had been received on 20 July 2016 and 25 July 2016. He complained that the correspondences were not sent directly to him despite the fact that his email address was available in ADAMS and considered that this violated his right of defence. He informed the IOC that he requested to be present during the opening of his B-Sample.
27. In his communication, the Athlete indicated that he did not accept the Adverse Analytical Finding. He submitted that he had been subject to numerous doping controls during his career and that none of them returned positive. He contended that he had always been very cautious when taking any medication. He asserted that the notice of potential anti-doping rule violation was a shock for him and indicated that the prohibited substance might be ingested inadvertently by consuming food supplements.
28. The Athlete indicated that he took the following products during the preparation phase of the 2008 Olympic Games: Cardioprotectors Neotone, Actovegin and Mildronate (all of them recommended by the medical staff of his national wrestling team during 2007 and 2008) as well as Isostar and Weider, namely L-Carnitine, L-Glutamine, Hardcore-Whey, Pure Creatine and Whey Amino. He finally mentioned that Ecdisteni 0,05 was also used at the time. He provided the IOC with several photos of the above-mentioned products and a certificated document allegedly delivered by RUSADA in 2007. The Athlete submitted that due to the long period of time since the sample collection, he could not test these products in order to determine whether they contained dehydrochlormethyltestosterone (turinabol).
29. In his communication, the Athlete referred to CAS jurisprudence (CAS 2009/A/1752 and CAS/A/1753) and submitted that the Beijing laboratory did not act in accordance with the applicable standards and its own SOPs. He complained about a lack of reproducibility of the IRMS analysis and its meaning for the validity of the entire analysis, the control and accountability for sample identity, the quality control and completeness of the documentation. He submitted that these issues raised suspicions and questions related to the identification of the sample and to the contamination of his sample in the laboratory.
30. On 26 July 2016, the IOC acknowledged receipt of the Athlete's written submissions and pointed out that the Athlete confirmed that he had received the first correspondences on 20 July 2016, i.e. before the opening and splitting of the B-Sample. The Athlete had thus had chosen not to respond before the date of the opening and splitting of the B-Sample. The IOC confirmed that the process occurred on 25 July 2016 in presence of an independent witness and informed the Athlete that in the event the B1-Sample analysis would have confirmed the presence of the Prohibited Substance, he would be granted the possibility to attend the opening and analysis of the B2-Sample.

31. The results of the B1-Sample analysis were reported on 28 July 2016. These results establish the presence of the metabolites of a Prohibited Substance, namely dehydrochlormethyltestosterone (turinabol).
32. Such results constitute an Adverse Analytical Finding (“**AAF**”). They were reported to the IOC in accordance with article 7.2.1 of the Rules.
33. Further to the verifications set forth in Art. 7.2.2 of the Rules and in application of Art. 7.2.3 of the Rules, the IOC President, Mr Thomas Bach, was informed of the existence of the AAF and the essential details available concerning the case.
34. Pursuant to Art. 7.2.4 of the Rules, the IOC President set up a Disciplinary Commission, consisting in this case of:
 - Mr Denis Oswald (Chairman, Switzerland), who is a member of the IOC Legal Affairs Commission;
 - Mrs Gunilla Lindberg (Sweden)
 - Mr Ugur Erdener (Turkey)
35. On 29 July 2016, the IOC notified the Athlete of the above-mentioned AAF and of the institution of disciplinary proceedings to be conducted by the Disciplinary Commission. The IOC also informed the Athlete of his right to request and attend the opening of the B2-Sample and its analysis, either in person and/or through a representative, which was initially scheduled to take place on 8 or 9 August 2016. The Athlete was finally informed of his right to request a copy of the laboratory documentation package.
36. On 2 August 2016, the Athlete provided the IOC with his completed AAF Notification Appendix in which he indicated that he did not accept the Adverse Analytical Finding and requested the opening and analysis of the B2-Sample. He indicated that he would not attend personally the process and that he would not be represented on this occasion. He finally requested a copy of the laboratory documentation package.
37. In this AAF Notification Appendix, the Athlete wrote the following comment:

“I request the copy of the laboratory documentation package from Beijing laboratory to be provided to me as soon as possible.”
38. On 3 August 2016, the IOC informed the Athlete that the opening of the B2-Sample would take place on 9 August 2016 at the Laboratory followed by the analysis of the sample over the following days. The Athlete was also advised that the current proceedings resulted of the analysis carried out by the Lausanne laboratory and that the analysis performed by the Beijing laboratory was not relevant for the purpose of his case.
39. As planned, the opening of the B2-Sample occurred on 9 August 2016 in the presence of an independent witness followed by the analysis.
40. The results of the B2-Sample analysis were reported to the IOC on 12 August 2016. They confirmed the presence in the B2-Sample of the metabolites of a Prohibited Substance, namely dehydrochlormethyltestosterone (turinabol).
41. On 16 August 2016, the IOC communicated to the Athlete the results of the B2-Sample analysis. The Athlete was also invited to indicate whether he accepted the Adverse Analytical Finding, whether he would attend the hearing of the Disciplinary Commission and/or he would submit a defence in writing. The Athlete was also informed of his right to request a copy of the laboratory documentation package.

42. On 19 August 2016, the Athlete sent to the IOC his completed Disciplinary Commission Form in which he indicated that he accepted the Adverse Analytical Finding. He further requested a copy of the B2-Sample laboratory documentation package. He also indicated that he would attend the hearing of the Disciplinary Commission personally and that he would be assisted by Mrs Ganna Bordiugova, legal counsel and interpreter. He finally indicated that he would submit a defence in writing.
43. On 25 August 2016, the IF provided the IOC with the Athlete's written submissions.
44. In his submissions, the Athlete stated again that he never used any Prohibited Substance during his career and suggested that such substance was ingested by consuming contaminated food supplements. He further referred to CAS decision CAS 2009/A/1752 and CAS 2009/A/1753 and raised questions related to the identification of his sample, which will be discussed below.
45. The Athlete further informed the IOC that left-overs of the food supplements used at the time would be sent to his National Anti-Doping Laboratory for analysis in order to determine whether those products contained the Prohibited Substance found in his sample. He asserted that he was not in a position to recollect enough evidence due to the long period of time since collection time.
46. The Athlete reminded the list of products used at the time and indicated that the Ukrainian anti-doping Center informed him that some of the food supplements produced by an American producer were contaminated with turinabol. The Athlete provided the IOC with articles found on the Internet regarding the contamination of food supplements. He contended that he discovered many cases in which athletes had been tested positive due to supplements' contamination with turinabol, mostly in the USA.
47. The Athlete submitted that based on his research, he had discovered that the substance at stake could be detected "in urine for approximately one year, which excludes the possibility of any mentally healthy professional athlete taking it knowingly".
48. The Athlete further referred to an UKAD report and to a WADA report, in which it would be stated that food supplements might be contaminated with turinabol.
49. He submitted that he never intentionally used any Prohibited Substance and asserted that he always checked the label of consumed products and read official webpages of the producer. He contended that he always consulted his team doctor, Dr Shvangyradze Merab to obtain his opinion on the food supplements that he used during his career. He attached to his written submission a statement of Dr Shvangyradze.
50. On 30 August 2016, the IOC provided the Athlete with a copy of the B1-Sample laboratory documentation package.
51. On 5 September 2016, the Athlete requested to be provided with a copy of the "*A1 and A2 Sample Laboratory Documentation Packages*" and the documents related to the handling of the sample.
52. On 16 September 2016, the IOC provided the Athlete with a copy of the B2-Sample laboratory documentation package as well as additional documentation related to his sample, in particular the handling of the sample in Beijing and its transfer to the Lausanne laboratory.

53. On 11 October 2016, the IOC informed the Athlete that the hearing of the Disciplinary Commission was scheduled to be held on 3 November 2016. The Athlete was invited to confirm by 19 October 2016 who will participate in the hearing. He was also granted a deadline until 28 October 2016 to file a written defence.
54. On 16 October 2016, the Athlete confirmed that he would participate in the hearing via videoconference and that he would be assisted by Ms Bordiugova.
55. On 24 October 2016, the IOC asked the Athlete whether he would be available if the hearing was rescheduled to take place on 4 November 2016.
56. On the same day, the Athlete's representative, Ms Bordiugova, confirmed the availability of her client.
57. On 26 October 2016, the Athlete filed additional written observations, in which he raised various analytical issues. The content of the submissions will be discussed below. In his submission, the Athlete revoked his acceptance of the Adverse Analytical Finding.
58. The hearing of the Disciplinary Commission was held on 4 November 2016 at the IOC Headquarters in Lausanne, Switzerland.
59. The Athlete participated in the hearing via videoconference. He was assisted by Ms Bordiugova, legal counsel and interpreter.
60. The IOC was represented by Ms Tamara Soupiron, IOC legal counsel as well as Mr Jean-Pierre Morand and Mr Nicolas Français, IOC external legal counsels.
61. At the hearing, the Disciplinary Commission granted the Athlete a deadline to file written submissions in regard of the observations' content of the Laboratory dated 3 November 2016.
62. The Athlete filed the corresponding submissions on 15 November 2016.

II. **APPLICABLE RULES**

63. These proceedings are conducted in application of the Rules.
64. Art. 2.1 of the Rules provides as follows:

"The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's bodily Specimen.

2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. 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 violation under Article 2.1.

2.1.2 Excepting those substances for which a quantitative reporting threshold is specifically identified in the Prohibited List, the detected presence of any quantity

of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.

2.1.3 *As an exception to the general rule of Article 2.1, the Prohibited List may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously."*

65. Art. 2.2 of the Rules provides as follows:

"Use or Attempted Use of a Prohibited Substance or a Prohibited Method

2.2.1 The success or failure of the 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."

66. Art. 5.1 of the Rules provides as follows:

"The IOC is responsible for Doping Control during the Period of the Olympic Games. The IOC is entitled to delegate all or part of its responsibility for Doping Control to one or several other organisations.

The Period of the Olympic Games, or In-Competition Period, is defined as "the period commencing on the date of the opening of the Olympic village for the Olympic Games, namely, 27 July 2008 up until and including the day of the closing ceremony of the Olympic Games, namely, 24 August 2008.

All Athletes participating at the Olympic Games shall be subject, during the Period of the Olympic Games, to Doping Control initiated by the IOC at any time or place, with No Advance Notice. Such Doping Control may include Testing for all Prohibited Substances and all Prohibited Methods referred to in the Prohibited List.

The IOC shall have the right to conduct or cause to conduct Doping Control during the Period of the Olympic Games, and is responsible for the subsequent handling of such cases."

67. Art. 7.3.3 of the Rules provides as follows:

"Notice to an Athlete or other Person who has been accredited pursuant to the request of the NOC, may be accomplished by delivery of the notice to the NOC. Notification to the Chef de Mission or the President or the General Secretary of the NOC of the Athlete or other Person shall be deemed to be a delivery of notice to the NOC."

68. Art. 8.1 of the Rules provides as follows:

"A violation of these Rules in connection with Doping Control automatically leads to Disqualification of the Athlete with all other consequences, including forfeiture of any medals, points and prizes."

69. Art. 9.1 of the Rules provides as follows:

"An Anti-Doping Rule violation occurring during or in connection with the Olympic Games may lead to Disqualification of all of the Athlete's results obtained in the Olympic Games with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 9.1.1."

70. Art. 9.1.1 of the Rules provides as follows:

“If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete’s results in the other Competition shall not be Disqualified unless the Athlete’s results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete’s anti-doping rule violation”.

71. Art. 9.3 of the Rules provides as follows:

“The management of anti-doping rule violations and the conduct of additional hearings as a consequence of hearings and decisions of the IOC, including with regard to the imposition of sanctions over and above those relating to the Olympic Games, shall be managed by the relevant International Federation”.

III. DISCUSSION

1. Establishment of Anti-Doping Rule Violation

72. The presence of the metabolite of a Prohibited Substance has been established in 2016 in the sample 1844965 that the Athlete provided on 19 August 2008, upon the occasion of the 2008 Olympic Games.
73. The substance detected in the Athlete’s sample, i.e. dehydrochlormethyltestosterone (turinabol) is an exogenous anabolic steroid. It is listed in the WADA 2008 Prohibited List and in all subsequent lists.
74. In spite of the arguments submitted by the Athlete in this respect, which are discussed below, the Disciplinary Commission is satisfied that the samples which have been re-analysed by the Laboratory are unequivocally linked to the Athlete and that no relevant departure from the WADA International Standards occurred.
75. Moreover, the Disciplinary Commission is further satisfied that the analytical results are valid and do properly establish the presence of the Prohibited Substance at stake in the Athlete’s samples.
76. The Disciplinary Commission notes that the Athlete does not dispute the analytical finding as such. In his signed Disciplinary Commission Form dated 19 August 2016, the Athlete expressly accepted the AAF before revoking his acceptance.
77. Based on the above, the Disciplinary Commission finds that an anti-doping rule violation pursuant to Art. 2.1 of the Rules consisting in the presence of a Prohibited Substance in the Athlete’s body is established.
78. In addition, the Disciplinary Commission finds that an anti-doping rule violation could also be held as established if the circumstances were considered in the perspective of art. 2.2 of the Rules.
79. In this respect, the Disciplinary Commission observes that the nature of the substance which was found in the Athlete’s sample (i.e. a traditional doping substance) makes this result consistent with the use of a Prohibited Substance specifically ingested to deliberately improve performance.
80. The Disciplinary Commission, which has now handled multiple cases arising out of the re-analysis of samples collection on the occasion of the 2008 and 2012 Olympic Games, observes that the presence of metabolites of this particular substance has been established in a remarkably high number of cases.

81. This constitutes an indication that said substance has been in widespread use by athletes, who were doping at that time.
82. Prior to the application of a new detection method searching for metabolites remaining detectable over a much longer period of time and which began to be applied only from late 2012 / 2013, the detection window of said substance was limited to a much shorter period of time (5 to 10 days).
83. The search for the so called “long-term” metabolites significantly extended the detection window (up to 50 and more days). Such a significant extension of the detection window is the obvious explanation for the spectacular and unprecedented high number of positive cases which were revealed by the re-analysis process.
84. Doping is a planned process in which the detection window is a key parameter. The athletes using the substance at the time, and/or the persons who were supporting them in this respect, planned with the detection window known at the time. They did not count on its later significant extension.
85. This explains why athletes, who had in the past effectively managed to avoid anti-doping controls could be eventually caught. It is an illustration of the effectiveness of the re-analysis process and of its purpose, which is essentially to give those, who think they can outsmart the anti-doping controls, the message that they will never be safe.
86. In any event for the purpose of these proceedings, it is not necessary to examine exhaustively whether the Athlete could establish how the substance entered his body, as the mere establishment of presence suffices to justify the application of the consequences provided for under the Rules.
87. In conclusion, the Disciplinary Commission finds that an anti-doping violation is established pursuant to both Art. 2.1 and Art. 2.2 of the Rules.

2. Arguments of the Athlete

88. The Athlete has challenged the commission of an anti-doping violation on the basis of various arguments set out in his written submissions, which are addressed below. None of them put the above finding into question.

i. Validity of the analytical results

89. The Athlete submits that the Beijing laboratory did not comply with the then applicable International Standards for Laboratories and with its own Sequence Operational Procedures (SOP) at the time of the analysis conducted in 2008.
90. The Athlete alleges that the departure from the ISL and SOP led to improper identification of his sample. The Athlete refers to CAS 2009/A/1752 (Vadim Devyatovsky v/ IOC) and CAS 2009/A/1753 (Ivan Tsikhan v/ IOC) to support his argument.
91. In this context, the Athlete requested a copy of the laboratory documentation package issued by the Beijing laboratory in 2008 and the performance of a DNA analysis.

a. The documentation provided by the IOC is sufficient

92. The Disciplinary Commission first finds that the documentation, which has been provided, is sufficient.

93. Since no positive results were reported in 2008, there was no reason to issue corresponding analytical documentation.
94. Such documentation has in any event no relevance in the context of these proceedings concerning solely and specifically the analytical results obtained by the WADA-accredited laboratory of Lausanne in 2016.
95. The Disciplinary Commission finds that the the documentation issued in relation to the handling and transfer of the Athlete's samples is sufficient to establish the identity of the samples, which served as basis to the analysis performed in Lausanne.
96. In respect of the transfer modalities, the Disciplinary Commission observes that the A-samples have not been resealed during their bulk transfer from the Beijing to Lausanne.
97. This was never disputed and was specifically explained by the IOC.
98. There was no requirement in the ISL in force at the time of the transfer (ISL 2008)¹ to reseat the A-Samples at the time of the transfer. The fact that the A-Samples were transferred without being individually resealed or placed in sealed boxes was however the reason why the IOC chose to rely on the analysis of the split B-samples, this as a cautionary measure.
99. The identity of the samples is indeed in any event ascertained and secured by the B-Sample, which remained sealed from collection date until the opening for the purpose of the analysis.
100. The Disciplinary Commission observes that the IOC followed in this respect the procedure provided for by the ISL applicable at the time of re-analysis (ISL 2016).
101. Since in this case the Athlete did not use the opportunity (not required by the ISL) to attend the opening and splitting of the B-Sample, such was performed in accordance with Art. 5.2.2.12.10 ISL in front of an independent witness, who attested that the seal of the B-Sample was intact and that the B2-Sample was resealed.
102. The opening of the B2-Sample also occurred in front of an independent witness. Thus a complete chain of custody has been preserved from the collection of the sample and its pouring in the bottles (A&B) bearing the unique number 1844965 until the opening of the B-Sample bearing the same unique number and which had remained sealed until it was opened for analysis.
103. Based on the sealed B-Sample, the process chosen by the IOC provides assurance in regard of the identity and integrity of the sample.
104. The Disciplinary Commission further notes that the results of the analysis of the A-Sample² are completely consistent with the results of the double analysis of the (sealed) B-Sample. This is logically a confirmation of the identity and integrity of the A-sample.
105. The Athlete nevertheless questions the fact that the analysed samples would be his samples and requires the conduct of a DNA analysis.

¹ The ISL presently in force (ISL 2016 – art. 5.2.2.12.4) still do not require individual resealing but individual or "box" resealing.

² The Disciplinary Commission notes that the analysis performed on the A-Sample went beyond screening analysis and effectively constitutes a third confirmation of the analytical results and of their validity.

b. The requested DNA analysis is not necessary

106. DNA analysis is not part of the regular analysis process.
107. The Disciplinary Commission nevertheless observes that such analysis could in principle, be performed (see Art. 6.2 ISL 2016).
108. The application of this additional and special analysis would however require a specific justification. Such may notably be given when there are reasons to consider that manipulations may have occurred and the Athlete's urine might have been substituted³.
109. In the absence of any such reasonable suspicion, the DNA analysis, which is an additional and burdensome measure, is not a relevant evidentiary measure and should not be ordered.
110. This is in particular the case when there is no indication at all that a manipulation could have occurred.
111. The request to conduct a DNA analysis is submitted with reference to the manipulations, which would have occurred in the laboratory, which analysed the samples collected on the occasion of the Olympic Games 2014 in Sochi.
112. The Disciplinary Commission observes that there is no element supporting at any level of plausibility that anything similar could have also occurred in connection with the samples collected in Beijing in general and in connection with the Athlete's samples in particular.
113. The circumstances in Sochi are completely out of the ordinary. They imply the organisation of a highly complex conspiracy involving the laboratory and possibly even secret service agents.
114. The fact that, in these extraordinary circumstances, samples may have been illegitimately opened, does not imply that this did or could have occurred in any previous testing conducted outside of this specific context and that this would generally put the integrity and/or identity of samples collected for doping controls in question.
115. The Disciplinary Commission observes that this is in any event not the case for the samples collected in Beijing in 2008.
116. At no time and place were these samples stored or handled in any context in which a manipulation of the kind, which occurred in Sochi, would be, even remotely, plausible.
117. The Disciplinary Commission further notes that the manipulations in Sochi had, logically, the purpose of removing Prohibited Substances, not adding such.
118. A scenario of deliberate spiking is already per se unlikely. It becomes completely implausible in a situation in which the substance found is a metabolite and one which, on top of everything, was not even identified and detectable at the time.
119. In conclusion, the Disciplinary Commission finds that the proposed scenario is in this case amounts to pure speculation based on an entire implausible factual scenario. The

³ This would be tampering within the meaning of Art. 2.5 of the Rules and a DNA analysis may help establishing it. It is to be noted that tampering could also and in any event lead to cancellation of the concerned results, without prejudice to other sanctions depending on what would be established in this respect.

Disciplinary Commission therefore holds that there is accordingly no reason to order the requested DNA analysis.

120. The Disciplinary Commission further observes that the other arguments submitted by the Athlete with respect to the identification of his sample and/or to put the validity of the analysis of his samples are equally without merits. These arguments include:
 1. the differences in pH allegedly existing between the samples analysed in Beijing and Lausanne;
 2. the issue raised in connection with the quantity of substance used;
 3. the issue raised in connection with the process of multiple samples analysed in one analytical batch and the traceability in this process; and
 4. the fact that a screening analysis was performed on the A-Sample and not on the B-Sample.
121. These arguments are all addressed in the observations, which the Laboratory submitted in this respect on 3 November 2016.
122. The Laboratory Director, Dr Tiia Kuuranne first explained that pH measurements can be based on various technologies and instruments.
123. Typically, the indicator paper (NB: typically used by Doping Control officers to obtain an indicative measurement upon collection) has a much lower accuracy than the precise measurement performed by the laboratories (through calibrated ion-selective glass electrode).
124. According to Dr Kuuranne's explanations, which the Disciplinary Commission understands and follows, the pH-results recorded by the two laboratories are consistent.
125. The same applies to the answer of Dr Kuuranne in respect of the adjustment of the quantity used for analysis. There is indeed nothing in the ISL which would support the claim that a quantitative adjustment could be a departure of the ISL, albeit one, which would have caused the AAF consisting in the identification of the substance, not the determination of its quantity.
126. As clearly explained by Dr Kuuranne, the processing of multiple samples in one analytical batch is further a routine and well-controlled procedure in doping analysis and any other analytical process. The traceability of the results and cross-contamination risks are monitored through the use of notably negative controls.
127. Regarding the process followed consisting in relying on the B-Sample split in two samples (B1- and B2- Sample) for the confirmation analysis, the Disciplinary Commission observes that the decision to apply this process is a decision of the Testing Authority, i.e. the IOC. Far from being in contradiction with the ISL, it is effectively a process expressly set forth in Art. 5.2.2.12.10 ISL.
128. Based on the above, the Disciplinary Commission finds that none of the Athlete's arguments is putting in question the validity of the analysis results of the Athlete's sample and the corresponding finding consisting in the establishment of an anti-doping rule violation.

ii. Contaminated Products

129. The Athlete alleges that the presence of a Prohibited Substance in his bodily sample may be a result of a contaminated product unintentionally ingested. At the hearing, the Athlete repeated that he had never knowingly used any Prohibited Substances during his career.
130. The Disciplinary Commission was provided with a list of food supplements that the Athlete alleges to have been using at the time of the 2008 Olympic Games.
131. Based on publications and various articles found on the Internet, the Athlete contends that some of his food supplements purchased in the USA at the time could have been contaminated with oral turinabol.
132. The Athlete provided the Disciplinary Commission with a statement issued by the National Anti-Doping Center of Ukraine, attesting that the analysis conducted on some of the left-over of the supplements allegedly used by the Athlete in 2008, detected the presence of turinabol.
133. The Disciplinary Commission observes that the issue whether the source of the presence of the Prohibited Substance could be the ingestion of contaminated supplements is in any event not relevant in the context of the present proceedings.
134. In the perspective of the application of the Rules, the mere presence of the Prohibited Substance – which is not contested by the Athlete – is indeed sufficient to establish an anti-doping rule violation and to automatically trigger the consequence applicable pursuant to the Rules, i.e. the disqualification of the results.
135. The Disciplinary Commission further observes that athletes have long been warned against the use of supplements. As such, the fact that turinabol may have been ingested as part of a supplement is not likely to constitute an element exonerating the Athlete from having been at fault for using a Prohibited Substance.
136. In this respect, the Disciplinary Commission observes that supplements do not, as a rule, contain turinabol and that accidental contamination of a legitimate controlled supplement by this substance appears to be very unlikely.
137. In any event and based on the elements provided in this proceeding, the Athlete has not met his burden to establish that he did not intentionally use a Prohibited Substance.
138. The Disciplinary Commission observes that the nature of the substance which was found in the Athlete's sample is consistent with intentional use of Prohibited Substances specifically ingested to deliberately improve performance. The fact that the metabolites of a doping substance, which is a "classical" doping substance, was found, supports this consideration.
139. Furthermore, the Disciplinary Commission observes that the fact that the substance in question may have been contained in food supplements would not exonerate the Athlete from having used it.
140. First, the use of food supplements, in which a Prohibited Substance is an ingredient may just be a way of using deliberately such Prohibited Substance. The fact that the Prohibited Substance might be included in a food supplement does not make it *per se* less reprehensible than the direct ingestion of the substance in isolation.

141. Furthermore, athletes have been repeatedly warned to apply extreme caution when using food supplements, which may contain undeclared Prohibited Substances or which may have been contaminated during production.
142. The mere hypothesis that the source of finding could be food supplements, which the Athlete simply alleges to have used, is far from being sufficient to establish that he applied the required level of caution.
143. Assuming for the sole purpose of discussion, that the source of the analytical finding would indeed be supplements containing Prohibited Substances without the Athlete's knowledge, there is in any event no indication (not to speak of any evidence) that the Athlete satisfied the high duty of care and caution, which is expected from high-level athletes in relation to the products they ingest.
144. In conclusion, the Disciplinary Commission finds that an anti-doping violation is thus established pursuant to both Art. 2.1 and Art. 2.2 of the Rules.

3. Consequences of the anti-doping rule violation

145. Under the Rules, the consequences of anti-doping rule violations are limited to consequences in connection with the 2008 Olympic Games.
146. In application of Art. 8.1 and 9.1 of the Rules, the results achieved by the Athlete during the 2008 Olympic Games shall be annulled, with all resulting consequences (notably withdrawal of medals, diplomas, pins, etc.).
147. In application of Art. 9.3 of the Rules, the further management of the consequences of the anti-doping rule violations, and in particular the imposition of sanctions over and above those related to the 2008 Olympic Games, shall be conducted by the United World Wrestling ("**UWW**").

* * * * *

CONSIDERING the above, pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 and, in particular, 2, 5.1, 7.3.3, 8, 9 and 16 thereof.

THE DISCIPLINARY COMMISSION OF THE
INTERNATIONAL OLYMPIC COMMITTEE
DECIDES

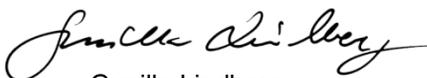
- I. The Athlete, Vasyl FEDORYSHYN:
 - (i) is found to have committed an anti-doping rule violation pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (presence and/or use, of a Prohibited Substance or its Metabolites or Markers in an athlete's bodily specimen),
 - (ii) is disqualified from the events in which he participated upon the occasion of the Olympic Games Beijing 2008, namely, the Men's 55-60 kg Freestyle wrestling event in which he ranked 2nd and for which he was awarded a silver medal, and
 - (iii) has the silver medal, the diploma and the medallist pin obtained in the Men's 55-60 kg Freestyle wrestling withdrawn and is ordered to return same.
- II. The UWW is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. The National Olympic Committee of Ukraine shall ensure full implementation of this decision.
- IV. The National Olympic Committee of Ukraine shall notably secure the return to the IOC, as soon as possible, of the silver medal, the diploma and the medallist pin awarded in connection with the Men's 55-60 kg Freestyle wrestling event to the Athlete.
- V. This decision enters into force immediately.

Lausanne, 31 March 2017

In the name of the IOC Disciplinary Commission



Denis Oswald, Chairman



Gunilla Lindberg



Ugur Erdener