



**Arbitration CAS 2016/A/4377 World Anti-Doping Agency (WADA) v. International Weightlifting Federation (IWF) & Yenny Fernanda Alvarez Caicedo, award of 29 June 2016**

Panel: Mr Jeffrey Benz (USA), President; Mr Markus Manninen (Finland); Mr Olivier Carrard (Switzerland)

*Weightlifting*

*Doping (boldenone)*

*CAS de novo review in doping cases*

*Burden of proof in doping cases*

*Disqualification of results under Article 10.8 WADA Code*

1. Whereas at various times the CAS jurisprudence on the question of the scope of the review of CAS panels has taken slightly, and often subtly, different views, in doping cases at least there can be no question that the CAS review is *de novo*. The reason for this is that the diligence, consistency, and resources of first instance panels varies considerably across countries, federations, and the individual factfinders involved; the *de novo* review protects athletes, anti-doping institutions, and all involved in the anti-doping process in sport. As a result, providing for *de novo* review enhances harmonization, serves as a check on extreme cases, allows correction of factual or legal errors, ensures the *lex sportiva* is consistent as much as reasonably possible, and otherwise builds trust in the system of results management.
2. In anti-doping cases the athlete bears the burden of establishing that the violation was not intentional; it naturally follows that the athlete must also establish how the substance entered his or her body. The athlete is required to prove his or her allegations on the “balance of probability”, which, according to long established CAS jurisprudence, means that the athlete needs to convince the panel that the occurrence of the circumstances on which the athlete relies is more probable than their non-occurrence. To establish the origin of the prohibited substance it is not sufficient for an athlete merely to protest his or her innocence and suggest that the substance must have entered his or her body inadvertently from some supplement, medicine or other product. Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question. Necessary are for example details about the date of the intake, the location and route of intake or any other details of the ingestion.
3. According to Article 10.8 of the WADA Anti-Doping Code (WADA Code), in addition to the automatic disqualification of the results 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. In case an athlete's provisional suspension ends prior to the start of his or her period of ineligibility, the question arises whether any results achieved by the athlete in the gap between the conclusion of the provisional suspension and the start of the period of ineligibility shall be disqualified under Article 10.8 of the WADA Code. If nothing prevents him or her from competing in the relevant period of time, the better interpretation of the ambiguous language of Article 10.8 of the WADA Code is that the athlete retains the results obtained in the period in question. To find otherwise would work an injustice, effectively increasing the maximum effect of the suspension in a manner not expressly contemplated by the WADA Code.**

## **I. PARTIES**

1. The World Anti-Doping Agency ("WADA" or the "Appellant") is the independent international anti-doping agency, constituted as a private law foundation under Swiss Law with its seat in Lausanne, Switzerland, and having its headquarters in Montreal, Canada. Its aim is to promote and coordinate the fight against doping in sport internationally.
2. The International Weightlifting Federation (the "IWF") is the IOC-recognized international governing body for the sport of weightlifting. The IWF maintains its seat in Lausanne, Switzerland and its headquarters in Budapest, Hungary, and is a signatory to the World Anti-Doping Code ("WADC").
3. Ms. Yenny Fernanda Alvarez Caicedo (the "Athlete" or "Second Respondent") is a Colombian National Team weightlifter from Cali, Colombia. She was born on 24 May 1995.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 6 May 2015, the Athlete underwent an in-competition doping control at the 2015 Junior Pan-American Championships in Cartagena, Colombia. The analysis of the sample revealed the presence of a metabolite of boldenone, an anabolic steroid prohibited under S1.1-a of the 2015

WADA Prohibited List. This substance is prohibited both in and out of competition, and is not a specified substance.

6. Following notification of her anti-doping rule violation, the Athlete was provisionally suspended as from 1 June 2015.
7. The Athlete subsequently requested an analysis of her B Sample. The sample was analyzed and confirmed the findings set forth above.
8. On 23 September 2015, the Athlete filed a formal complaint against the Colombian weightlifting team's physiotherapist with the Attorney General in Cali, Colombia asserting *inter alia* that she was unlawfully injected with the prohibited substance without her knowledge or consent.
9. On 22 November 2015, a hearing was held before the IWF Hearing Panel. At such hearing, the Athlete confirmed the presence of exogenous boldenone in her system at the time of her doping control but alleged that the physiotherapist on her team had injected the prohibited substance into her body at the direction of the team doctor. The injections were made approximately 15 times throughout the year and following one such injection, she experienced localized pain surrounding the injection site. She openly discussed this injection and the subsequent pain with her teammates.
10. On 22 November 2015, the IWF Hearing Panel imposed a sanction of ineligibility covering the period of the Athlete's provisional suspension (i.e. 1 June 2015 to 22 November 2015) (the "Appealed Decision"). Moreover, in the Appealed Decision, the IWF Hearing Panel disqualified all individual results and imposed the forfeiture of all medals, points, and prizes achieved by the Athlete in the 2015 Junior Pan-American Championships, as well as in any other competition she may have participated in between 6 May 2015 and 1 June 2015.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

11. On 4 January 2016, WADA filed its statement of appeal at the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code") against the IWF and the Athlete with respect to the Appealed Decision. In its Statement of Appeal, WADA requested that this procedure be conducted in English and nominated Mr. Markus Manninen, attorney-at-law in Helsinki, Finland as arbitrator.
12. On 5 January 2016, the CAS Court Office acknowledged receipt of WADA's statement of appeal and *inter alia* invited the Respondents to object to conducting the procedure in English, failing which all submissions must be filed in English in accordance with Article R29 of the Code.
13. On 12 January 2016, the First Respondent nominated Mr. Olivier Carrard, attorney-at-law in Geneva, Switzerland as arbitrator, and confirmed that this appeal should proceed in English.
14. On 13 January 2016, the CAS Court Office acknowledged receipt of the First Respondent's nomination of Mr. Carrard, and invited the Second Respondent to state whether she agreed

with the joint appointment of Mr. Carrard, her silence in this respect being considered acceptance of such joint nomination.

15. On 14 January 2016, the Appellant filed its appeal brief in accordance with Article R51 of the Code.
16. On 2 February 2016, having heard no response from the Second Respondent, the CAS Court Office confirmed the joint nomination of Mr. Carrard on behalf of the Respondents.
17. On that same day – 2 February 2016 – the Second Respondent filed her answer in accordance with Article R55 of the Code. Such answer, however, was filed in Spanish.
18. On 5 February 2016, the CAS Court Office acknowledged receipt of the Second Respondent’s answer and *inter alia* noted that as this procedure would be handled in English, the Second Respondent’s answer must be filed in English in accordance with Article R29 of the Code. The CAS Court Office invited the Second Respondent to file a translated version of her answer within 5 days.
19. Moreover, on 5 February 2016, the First Respondent filed its answer in accordance with Article R55 of the Code.
20. On 16 February 2016, the CAS Court Office informed the parties that the Second Respondent did not timely file an English translation of her answer.
21. On 24 February 2016, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed that the Panel appointed to hear this dispute was as follows:
  - President: Mr. Jeffrey G. Benz, attorney-at-law in Los Angeles, California and London, United Kingdom
  - Arbitrators: Mr. Markus Manninen, attorney-at-law in Helsinki, Finland  
Mr. Olivier Carrard, attorney-at-law in Geneva, Switzerland.
22. On 26 February 2016, the Second Respondent filed her answer translated in English. No objections concerning this untimely filing of a translated answer were raised by the other parties.
23. On 6, 10, and 11 May 2016, the Second Respondent, the First Respondent, and the Appellant, respectively, signed and returned the Order of Procedure to the CAS Court Office.
24. On 24 May 2016, a hearing was held at the CAS Headquarters. The Panel was assisted by Mr. Brent J. Nowicki, Counsel to the CAS, and joined by the following:

*For the Appellant:*

Mr. Ross Wenzel (Counsel)  
Mr. Nicolas Zbinden (Counsel)

*For the First Respondent:*

No Appearance

*For the Second Respondent:*

Mr. Frank Huggett (Counsel)

Ms. Tatiana Figueroa (Translator)

Ms. Arlen Charry (Translator)

25. No witnesses testified at the hearing.
26. No party objected to the appointment of the Panel and at the conclusion of the hearing, the parties confirmed that their right to be heard had been fully respected.
27. At the conclusion of the hearing, the Panel invited the parties to submit their respective authorities they wished the Panel to consider in support of their positions. The Panel made clear that only the authorities and no arguments were to be provided. WADA's counsel followed the Panel's instruction but the Athlete's counsel submitted arguments. The Panel considered the authorities submitted by the parties but disregarded the argument that was submitted in this final submission of information.

#### **IV. SUBMISSIONS OF THE PARTIES**

28. WADA's submissions, in essence, may be summarized as follows:
  - It is undisputed that on the occasion of the 2015 Junior Pan-American Championships the Athlete's A and B samples revealed the presence of boldenone, a prohibited substance on the WADC. As a result, the Athlete breached Article 2.1 of the IWF ADP.
  - In accordance with Article 10.2.1.1 of the IWF ADP, the period of ineligibility shall be four years where the prohibited substance does not involve a specified substance and the Athlete cannot show that the anti-doping rule violation was not intentional. The Athlete is required to prove her "non-intent" on a "balance of probabilities" and the circumstances on which the Athlete relies upon must be more probable than their non-occurrence.
  - The Athlete cannot protest her innocence and suggest that the prohibited substance must have entered her body through a contaminated product. Instead, she must adduce specific evidence that she ingested a product which contained the substance in question.
  - There is no evidence which links taking the injections from her physiotherapist to the prohibited substance. Her entire theory as to the source of the product relies on an assumption that because she received injections from her trainer, and because she tested positive for boldenone, such anti-doping rule violation must have resulted from the injection.

- Nevertheless, the assertions brought forward by the Athlete are of no assistance. She never called her physiotherapist as a witness to confirm the type of substance he was injecting, the Athlete and the criminal complaint brought against the physiotherapist does not prove the source of the substance (it only supports the Athlete's belief that the injection was the source), and moreover, there is no corroborating evidence to support the side effects she asserts occurred as a result of the suspicious injection. Therefore, the Athlete should be suspended for 4 years.
- However, to the extent it is determined that the Athlete has indeed established the source of the substance and that the anti-doping rule violation was not intentional, then a 2-year period of ineligibility should apply. No downward reduction from this 2-year period of ineligibility is warranted based on the Athlete's significant degree of fault (see Article 10.5.2 of the IWF ADP) and no exceptional circumstances justify any reduction.

29. In its request for relief, WADA provides as follows:

*WADA hereby respectfully requests CAS to rule:*

1. *The Appeal of WADA is admissible.*
2. *The decision rendered by the IWF Hearing Panel on 22 November 2015 in the matter of Yenny Fernanda Alvarez Caicedo is set aside.*
3. *Yenny Fernanda Alvarez Caicedo is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility or provisional suspension effectively served by Yenny Fernanda Alvarez Caicedo before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
4. *All competitive results obtained by Yenny Fernanda Alvarez Caicedo from 6 May 2015 through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.*
5. *WADA is granted an award for costs.*

30. The First Respondent's submissions, in essence, may be summarized as follows:

- According to Article 10.2.1 of the IWF ADP, the period of ineligibility shall be four years unless the Athlete can establish that the anti-doping violation was not intentional. When it is established that the violation was not intentional, the period of ineligibility shall be two years in accordance with Article 10.2.2 of the IWF ADP. However, according to Article 10.5.2 of the IWF ADP, the sanction may be reduced to no less than one-half of the period of ineligibility if the Athlete can establish that she bore no significant fault or negligence.
- Under Article 10.4 of the IWF ADP, the administration of a prohibited substance by the Athlete's physician or trainer cannot be a case of no fault or negligence, but can result in a reduced sanction based on the particular facts of her case. The burden to obtain a reduction is on the Athlete.

- The Athlete has never tested positive for a prohibited substance in the past and her progression as an athlete has been consistent and does not show signs of doping. Moreover, she has almost the perfect body for the practice of weightlifting.
- The Athlete did not simply make mere protestations of innocence nor did she raise unverified hypothesis or a plain denial. She offered the evidence that was available to her. This was confirmed by the underlying panel who was comprised of two members who were deeply involved in the sport of weightlifting.
- The Athlete filed a criminal complaint against her physiotherapist which would have been a very risky move if she had known her allegations were untrue. In this regard, it is unrealistic to think that he would agree to participate in this procedure.
- Overall, it is possible that the physiotherapist did inject her with a prohibited substance to give other athletes better chances of winning/being selected in the future.
- Notwithstanding the above, the IWF does admit that it erred in setting the original sanction as it should be, according to the applicable regulations, 1 year period of ineligibility.

31. In its request for relief, the First Respondent requests as follows:

*In light of the foregoing, the Respondent respectfully [] requests the Panel to decide that:*

1. *The appeal is partially upheld.*
2. *Yenny Alvarez is sanctioned with a one (1) year period of ineligibility.*
3. *The other provisions of the IWF decision of 22 November 2015 are confirmed.*
4. *The IWF is granted a limited contribution for expenses, at the discretion of the Panel and to be paid by the Appellant.*

32. The Second Respondent's submissions, in essence, may be summarized as follows:

- The Athlete has never tested positive before and did not test positive in the events leading up to the Junior Pan-American Championships.
- The Athlete faces a “total absence of guilt, responsibility, and negligence” and the Appealed Decision was adequately delivered.
- The application of “non reformatio in pejus” applies as a universal principle.
- The Athlete filed a criminal complaint against her physiotherapist which establishes that she did not intentionally ingest the boldenone. The substance was administered to her without her knowledge and prescribed by a team doctor.
- The results obtained by the Athlete at the Junior Pan-American Championships were not up to her standards.
- The Athlete does not use much medicine, and is a fit athlete who obtained results because of her perfect body and hard work.

33. In her answer, the Second Respondent's request for relief is stated as follows:

*For all these reasons I ask you not to take account any of the requirements of the appellants.*

*With the first instance decision was in accordance with the law, the rules that govern us, both the IWF and WADA as well as the principles universal right to mention and the International Covenant on Civil and Political Rights.*

*As a special request I beg to confirm the decision made by the honorable gentlemen panel; Pierre Cornu, Chairman, Ashley Metcalfe, Member and Kyle Pierce.*

## V. JURISDICTION

34. Article R47 of the Code provides as follows:

*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*

*An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.*

35. In accordance with Article 13.2.1 of the IWF ADP, in cases involving an International-Level Athlete, a decision from the IWF Hearing Panel may be appealed exclusively to the CAS. In this respect, an athlete shall be considered an International-Level Athlete if such athlete participates in an IWF Event. IWF Events are registered as such on the IWF website. As the 2015 Junior Pan-American Championships are on the IWF website, they are therefore an IWF Event and the Panel confirms that the Athlete is an International-Level Athlete.
36. Moreover, even if the Athlete were not an International-Level Athlete, the Panel confirms that it has jurisdiction over this case vis-à-vis Article 13.1.3 of the IWF ADP which allows WADA a direct right of appeal to the CAS against any decision made under the IWF ADP.

## VI. ADMISSIBILITY

37. Article R49 of the Code provides as follows:

*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. [...].*

38. Pursuant to this provision of the Code, it is necessary to determine if there is any specific time limit established in the IWF ADP regulations that provides as much. In this regard, Article 13.7.1 of the IWF ADP provides: the filing deadline for an appeal filed by WADA shall be the later of:



- (a) Twenty-one days after the last day on which any other party in the case could have appealed, or
  - (b) Twenty-one days after WADA's receipt of the complete file relating to the decision.
39. Taking into account that the complete file relating to the Appealed Decision was sent to the Appellant on 14 December 2015, and that WADA filed its Statement of Appeal on 4 January 2016, the Panel considers that the Appellant has complied with the applicable time limit under Article R49 of the Code and Article 13.7.1 of the IWF ADP.

## VII. APPLICABLE LAW

40. Article R58 of the Code provides as follows:

*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

41. Pursuant to Article R58 of the Code, the Panel concludes that the present appeal shall be decided on the basis of the IWF ADP, in conjunction with the 2015 WADC, so as to harmonize anti-doping policies, rules and regulations within the sport of weightlifting, as well as all sports around the world. In this respect, it is noted that no party asserted that any other set of laws or procedures should apply alternatively.

## VIII. MERITS

### A. Standard of Review

42. The IWF in its answer, and the Athlete in her submissions, argued that the Panel should give some form of deference to the findings and decision of the IWF panel of first instance. As it was stated, in summary form, the first instance panel was comprised of knowledgeable individuals, including a lawyer, a coach, and a doctor, who were known for being tough on doping issues, and the panel made reasoned findings about the Athlete and her testimony. Essentially, the argument is that the first instance panel knows best how to evaluate the evidence and law in this case.
43. This position flies in the face of the relevant legal standards governing the standard of review in CAS appeals.
44. First, Article R57 of the Code makes clear in relevant part that, *"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance"*. In other words, the Panel acts as if it were considering the question for the first time, affording no deference to the decisions below. This *de novo* review

power of CAS panels is a hallmark of CAS arbitration guaranteeing procedural fairness to both sides in a dispute and permitting a CAS panel to consider all evidence anew.

45. Second, the IWF ADP (and the WADC) guarantee *de novo* review in all doping proceedings on appeal. Article 13.1.1 of the IWF ADP, titled “*Scope of Review Not Limited*”, provides that, “*The scope of review on appeal includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the initial decision maker*”. As if this was not clear enough, Article 13.1.2 of the IWF ADP, title “*CAS Shall Not Defer to the Findings Being Appealed*”, provides that, “*In making its decision, CAS need not give deference to the discretion exercised by the body whose decision is being appealed*”. The Comment to Article 13.1.2 goes on to state that, “*CAS proceedings are de novo. Prior proceedings do not limit the evidence or carry weight in the hearing before CAS*”.
46. At various times the CAS jurisprudence on this point has taken slightly, and often subtly, different views, but in light of the primary authorities set out above, in doping cases at least, there can be no question that the CAS review is *de novo*. And there is good reason for this review, which protects athletes, anti-doping institutions, and all involved in the anti-doping process in sport. The diligence, consistency, and resources of first instance panels varies considerably across countries, federations, and the individual factfinders involved. As a result, providing for *de novo* review enhances harmonization, serves as a check on extreme cases, allows correction of factual or legal errors, ensures the *lex sportiva* is consistent as much as reasonably possible, and otherwise builds trust in the system of results management.
47. Thus, even if the Panel was inclined to give deference to the IWF first instance decision, which the Panel is not inclined to do, the Panel is prohibited from doing so by the IWF ADP and the relevant procedural rules, the Code, and by basic fundamental considerations. Accordingly, the Panel undertook its task by reviewing the case *de novo*.

## **B. Intention**

48. The Athlete was charged with the presence in her sample of boldenone, a prohibited substance or its metabolites or markers, a violation of Article 2.1 of the IWF ADP. Boldenone is not a Specified Substance, but is a well-known steroid. The Athlete did not challenge this finding, or the presence of boldenone, and in fact accepted that it was there throughout this entire proceeding. As a result, the only issue of significance for the Panel was to determine her length of sanction.
49. Under Article 10.2.1 of the IWF ADP, the sanction for such an offense is four years where:
  - 10.2.1.1 *The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*
50. Article 10.2.3 of the IWF ADP provides in pertinent part that:

*As used in Articles 10.2 and 10.3, the term ‘intentional’ is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she knew constituted*

*an anti-doping rule violation or knew that there were was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. ....*

51. The Athlete bears the burden of establishing that the violation was not intentional within the above meaning, and it naturally follows that the athlete must also establish how the substance entered her body. The Athlete is required to prove her allegations on the “balance of probability”. This standard, long established in the CAS jurisprudence, requires the Athlete to convince the Panel that the occurrence of the circumstances on which the Athlete relies is more probable than their non-occurrence. *E.g.*, CAS 2008/A/1515, at para. 116.
52. To establish the origin of the prohibited substance, CAS and other cases make clear that it is not sufficient for an athlete merely to protest their innocence and suggest that the substance must have entered his or her body inadvertently from some supplement, medicine or other product which the athlete was taking at the relevant time. Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question.
53. For example, in CAS 2010/A/2230, the Sole Arbitrator expressed the athlete’s burden as follows:

*To permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination – two prevalent explanations volunteered by athletes for such presence – do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature for the athlete’s basic personal duty to ensure that no prohibited substances enter his body.*

54. Similarly, in CAS 99/A/234 & 235, the Panel stated that, “*The raising of an unverified hypothesis is not the same as clearly establishing the facts*”.
55. In the Final Decision of the IBAF Doping Hearing Panel in the case of Pedro Lopez (IBAF 09-003), the panel made the following comment:

*In this case, the Athlete’s suggestion that one or more of the medications or supplements that he took must have contained Boldenone is nothing more than speculation, unsupported by any evidence of any kind. He has not shown that Boldenone was an ingredient of any of those substances, nor has he provided any evidence (for example) that the supplements he took were contaminated with Boldenone. Such bare speculation is not nearly sufficient to meet the Athlete’s burden under Article 10.5 of establishing how the prohibited substance got into his system.*

56. In CAS 2006/A/1067, the Panel held as follows:

*The Respondent has a stringent requirement to offer persuasive evidence of how such contamination occurred. Unfortunately, apart from his own words, the Respondent did not supply any actual evidence of the specific circumstances in which the unintentional ingestion of cocaine occurred.*

57. The Athlete’s explanations here have virtually no evidentiary basis supporting them. Missing are details about the date of the injection, the location where the injection was given, or a

description of any details concerning it other than the effects of the injection later. Some factors in this regard have been considered by the Panel as follows:

- The physiotherapist denies the allegations made by the Athlete;
- The physiotherapist was not called as a witness by the Athlete in the IWF proceeding or this CAS proceeding;
- The criminal complaint the athlete has brought against the physiotherapist is evidence at most that the athlete believes her own theory about the source of the substance but it does not establish that as a fact. While she may face imprisonment herself in Colombia for filing a false complaint, that fact does not make the facts she alleges in that complaint anything more than allegations, and her own subjective beliefs, that have not been established in this proceeding;
- The Athlete has said the team doctor prescribed the injection and requested the physiotherapist to make the injection, but there is no evidence of the prescription nor was the doctor called as a witness;
- The Athlete asserted that she had the perfect body for weightlifting. This has no impact on the length of sanction whatsoever. Whether she had the perfect body or not does not establish intent;
- The Athlete herself did not testify in the CAS proceeding or provide her own evidence in the CAS proceeding. Though her counsel stated that it was economically difficult for her to attend the proceeding in Lausanne, which the Panel accepts, there are other inexpensive or free methods for providing testimony and the Athlete did not make any effort to avail herself of those possibilities to present herself to the Panel;
- The Athlete provided no evidence of the infection she claimed she suffered from as a result of the injection;
- No support was provided for the proposition that a boldenone injection could or would be likely to cause the symptoms she claimed she had or an infection; and
- Despite the fact that the Athlete claims that her teammates suffered the same injection and that she discussed it with them at the time, none of her teammates was called as a witness and none of them tested positive at the same event. In fact, the IWF tested six other female athletes at the same event that yielded this athlete's positive and all of these tests were negative.

58. Even accepting as true the statements of the Athlete, there is no concrete evidence linking the injection in question to the boldenone found in the Athlete's sample. Her theory, which is merely that, boils down to an assumption that if she tested positive for boldenone it must have resulted from a particular injection which led to some unusual and uncomfortable side effects. If this explanation was accepted by the Panel here, any athlete who blindly takes medication from a member of their entourage could simply assert that the prohibited substance must have been from one or other pill or product that tasted strange or produced some unusual side-effect,

without any additional showing. This simply cannot be sufficient for the athlete to meet her burden.

59. The assertion was made that the Athlete suffered from youth and inexperience, yet the evidence showed that she was not a minor at the time of the violation and she was hoping to qualify to compete at the 2016 Olympic Games in a qualifying competition in Colombia in June 2016; in other words she was an elite and experienced athlete. In any event, the Panel notes that youth and inexperience are not factors to be considered in determining fault but are only relevant in assessing degree of fault should the Panel undertake that analysis.
60. Accordingly, the Panel finds that the Athlete has not met her burden of proof, and the anti-doping violation must be deemed to be intentional. She must therefore be sanctioned with a four-year period of ineligibility under the IWF ADP, unless she can establish a basis for reduction; the Athlete asserted here the presence of no significant fault or negligence, but the Athlete did not assert no fault or any other grounds as a basis for reduction of her sanction.

### **C. No Significant Fault or Negligence**

61. Under Article 10.5.2 of the IWF ADP, which covers “Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1”:

*If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person’s degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. ....*

62. However, the Comment to Article 10.5.2 provides that, “Article 10.5.2 may be applied to any anti-doping rule violation except those Articles where intent is an element of the anti-doping rule violation (e.g. Article 2.5, 2.7, 2.8 or 2.9) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Athlete or other Person’s degree of Fault”.
63. In other words, because intention is already considered as an element of the sanction under Article 10.2.1, and the Panel has established that intention was not proven, the Panel cannot consider the application of Article 10.5.2 to reduce her sanction.
64. Accordingly, the full, four-year sanction shall apply.

### **D. Loss of Results**

65. The parties uniformly accept that the Athlete’s results from the event in which she competed where she gave the sample that resulted in her analytical positive must be vacated. This is of course consistent with a long line of CAS cases and the express terms of Article 9 of the IWF ADP (and the same numbered article in the WADC). The Panel accepts this position and confirms that the Athlete shall lose her result from the 2015 Junior Pan-American Championships, as well as forfeiture of any medals, points and prizes at this event.

66. Where the parties differ is on the treatment of her results obtained during the period between the end of her provisional suspension on 22 November 2015 and today.
67. In its requests for relief in its appeal brief, WADA requests that, “*All competitive results obtained by [Ms. Alvarez] from 6 May 2015 through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes [sic]*”. The Athlete in her response to the appeal denies this result. The IWF in its answer does not address this request.
68. The Panel has reviewed the relevant provisions of the IWF ADP. The IWF ADP is silent on this specific point, and WADA has not directed the Panel to any authority supporting its position.
69. Article 10.8 of the IWF ADP, titled “Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation”, states as follows:
- “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”* (emphasis added).
70. The emphasized language points out an ambiguity in this provision in the IWF ADP with respect to the period for which results can be annulled. In this case, the provisional suspension commenced on 1 June 2015, and that period ended on 22 November 2015. By her counsel’s admission, the Athlete competed in an event thereafter, the Colombian national championships. The period of her “Ineligibility” commences at the date of this award, as set forth below, thereby creating a gap between the conclusion of her provisional suspension and the start date of this award. Therefore, a question arises as to whether the emphasized language of Article 10.8 contemplates the gap in the Athlete’s suspension as occurred here or not? In this instance, the Athlete did nothing wrong; she was exonerated for time served by the IWF panel as of 22 November 2015 so there was nothing to prevent her from competing thereafter until this award is issued. This was her legal right.
71. The Panel thinks the better interpretation of the emphasized language in Article 10.8, as applied to this case, is that the Athlete retains the results she obtained in the period between 22 November 2015 and the date of this award, because she will be suspended for the full four years contemplated by the IWF ADP for this violation, with credit for time already served. To find otherwise would work an injustice, effectively increasing the four years effect of her suspension in a manner not expressly contemplated by the IWF ADP. Of course, this ambiguity is not the result of the IWF’s drafting as it is contained in the WADC; WADA is eminently capable of addressing this point, as it sees fit as the legislator, in future editions of the WADC, but it is stuck with these provisions as drafted currently.

## E. Period of Ineligibility Start and End Dates

72. With respect to the sanction start date, the Panel is guided by Articles 10.10, 10.10.1 and 10.10.3 of the IWF ADP.

73. Article 10.10, titled “Commencement of Ineligibility Period”, provides that:

*Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.*

74. Article 10.10.1 provides for an earlier start date, as early as the date of sample collection, if “*there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete ...*”. There was no evidence presented here of any such delay and no argument was made with respect thereto.

75. Article 10.10.3, titled “Credit for Provisional Suspension or Period of Ineligibility Served”, provides in pertinent part as follows:

*10.10.3.1 If a Provisional Suspension is imposed and 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. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal.*

76. Here, the Athlete was provisionally suspended starting from 1 June 2015. The IWF panel imposed, in its decision of 22 November 2015, a sanction that was the equivalent of “time served”; in other words the IWF panel determined to impose “*a sanction of ineligibility covered by the time for which the athlete has been was [sic] provisionally suspended*”. The relevant period of time she was provisionally suspended was from 1 June 2015 until 22 November 2015, or roughly 5 months and 22 days.

77. The Panel was not presented with any acceptance by the Athlete of any provisional suspension beyond 22 November 2015. In fact, the Panel heard submissions from her counsel that she competed at least once between 22 November 2015 and the date of the CAS hearing, and that she intends to compete in the Colombia qualifying event for her class for the 2016 Olympic Games in June 2016. As a result, it cannot be said that she remained provisionally suspended beyond 22 November 2015.

78. Considering all of this, the Panel determines that the Athlete’s four-year period of ineligibility shall commence on the date of this award, with credit to her for the time she was provisionally suspended of 5 months and 22 days.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by World Anti-Doping Agency against the Decision rendered by the IWF Hearing Panel dated 22 November 2015 is upheld.
2. The Decision of the IWF Hearing Panel dated 22 November 2015 is set aside.
3. Ms. Yenny Fernanda Alvarez Caicedo is sanctioned with a four-year period of ineligibility, starting as of the date of this award, with credit given for the period of the Athlete's provisional suspension (i.e. 1 June 2015 to 22 November 2015). All results, medals, points and prizes obtained at the 2015 Junior Pan-American Championships are forfeited.

(...)

6. All other prayers for relief are dismissed.