



Arbitration CAS 2002/A/389, 390, 391, 392 & 393 A., B., C., D. & E. / International Olympic Committee (IOC), award of 20 March 2003

Panel: Mr. Stephan Netzle, (Switzerland), President; Mr. Dirk-Reiner Martens (Germany); Mr. Richard Young (USA)

Cross country skiing

Blood doping

Use of a prohibited method

No legitimate medical treatment

1. **The definition of Blood Doping pursuant to the Olympic Movement Antidoping Code (OMAC) includes the administration of the athlete's own blood. The definition of blood doping is met irrespective of the amount of blood withdrawn and re-injected and whether or not it is potentially harmful to athletes' health and/or capable of enhancing their performance.**
2. **The conditions under which a certain medical treatment, which would otherwise fall under the definition of doping, may be justified are truly exceptional and must therefore be demonstrated by the athlete or the person performing such treatment. To determine whether a certain medical treatment is legitimate under the OMAC, the CAS applies the following test:**
 - a) **The medical treatment must be necessary to cure an illness or injury of the particular athlete;**
 - b) **Under the given circumstances, there is no valid alternative treatment available which would not fall under the definition of doping;**
 - c) **The medical treatment is not capable of enhancing the athlete's performance;**
 - d) **The medical treatment is preceded by a medical diagnosis of the athlete;**
 - e) **The medical treatment is diligently applied by qualified medical personnel in an appropriate medical setting;**
 - f) **Adequate records of the medical treatment are kept and are available for inspection.**
3. **In the present case, the UV Blood Transfusions were administered in a private place by a coach with no medical support and without supervision of, or disclosure to, the team doctor, the IOC Medical Commission or the team management. The UV Blood Transfusions were not even documented by proper records. Consequently, the test for legitimate medical treatment was not met and the blood transfusion must be considered as blood doping.**

On 26 February 2002, shortly after the closing ceremony of the 2002 Winter Games, workers cleaning a house near Soldier Hollow, Utah, discovered several bags containing blood transfusion equipment.

The following items were found (the "Items"):

VIALS AND AMPOULES :

Ferlixit, Orale-endovena, 5ml

2 Perfolic 15mg IV/IM Titolare A.K

1 Prefolic, 3 ml

Mel H Ampullen IV

VARIOUS PHOSPHATE AND SODIUM SALTS

VARIOUS VITAMINS AND AMINO ACIDS

VARIOUS MATERIALS THAT HAVE NOT BEEN CHARACTERIZED

TRANSFUSION EQUIPMENT

Following their discovery, the Items were handed to Utah police forces and further to the Salt Lake Organizing Committee for the Games ("SLOC"), which in turn transferred the Items to the Utah Health Department and informed the IOC accordingly.

The chalet where the Items were found had been rented out to a national team for their cross-country skiing athletes and accompanying staff from 30 January 2002 until 25 February 2002. It was later established that during that period of time, the athletes kept going back and forth between the chalet and other premises occupied by the national team.

The IOC informed the National Olympic Committee concerned and requested an explanation which was received on 13 March 2002. An Inquiry Commission ("IC") was appointed by the IOC President to investigate the case and to report its findings to the IOC Executive Board ("IOC EB"). The purpose of the inquiry was to determine whether a violation of the Olympic Movement Anti-Doping Code ("OMAC") had been committed in this instance.

Following a hearing held in Lausanne on 16 March 2002 which was attended by Messrs. A., B. and other members of the Team, the IC was able to establish that Mr. A. had performed so-called UV Blood Transfusions on his son B. on up to four occasions after arriving in Utah to prepare for competition, and that he had performed one UV Blood Transfusion on Mr. C. immediately after the latter's arrival in Utah on 2 or 3 February 2002 (for a description of UV Blood Transfusion, see paragraph **Error! Reference source not found.** ff. below). The reason put forward by Mr. A. to justify the use of this blood therapy was that such treatment was the only one available which was able to relieve his son B. of the suffering caused by his neurodermatitis. Following this hearing on 16 March 2002, the IC also felt the need to further investigate the behavior of Dr. D. and Mr.E.

During its session held in Kuala Lumpur on 26 May 2002, the IOC EB rendered a decision in each of the Appellants' cases. Such decisions have been summarized as follows:

Mr. A.:

(...) The issue is whether the procedure carried out by Mr. A. and used on the athletes Mr. B. and Mr. C., which falls under the definition of blood doping (...) and constitutes a prohibited method (...), was used for therapeutic purposes exclusively. This was not proved to be the case. It should also be noted that the procedure carried out on the athletes had not been brought to the attention of the IOC Medical Commission.

The IOC Executive Board declares Mr. A. ineligible to participate in all Olympic Games up to and including the Olympic Games held in 2010.

Mr. B.:

The IOC Executive Board considers that Mr. B., the recipient of the Prohibited Method, has committed a doping offence (...).

Considering the above, (...) the Executive Board of the International Olympic Committee decides:

The athlete Mr. B., cross-country skiing team, is disqualified from the events in which he competed at the XIX Olympic Winter Games, Salt Lake City 2002.

Mr. C.:

The IOC Executive Board considers that Mr. C., the recipient of the Prohibited Method, has committed a doping offence (...).

Considering the above, (...) the Executive Board of the International Olympic Committee decides:

The athlete Mr. C., cross-country skiing team, is disqualified from the events in which he competed at the XIX Olympic Winter Games, Salt Lake City 2002.

Mr. E.

(...) According to statements made by Mr. E. (...), he uses in his normal practice two different methods implying the taking and re-injecting of own blood after treatment. He admitted that he had, on several occasions, treated several athletes by these methods, including members of the Cross-Country Ski Team. However, he was not sure whether he had carried out this procedure in Salt Lake City but he did not exclude having done so. In any event, he would have been prepared to use this treatment if he had felt it appropriate. (...) The IOC Executive Board concludes that Mr. E. is therefore using and advocating methods which are prohibited by the Olympic Movement Anti-Doping Code (...).

Considering the above, (...) the Executive Board of the International Olympic Committee declares Mr. E. ineligible to participate in all Olympic Games up to and including the Olympic Games held in 2010.

Dr. D.:

The IOC Executive Board considers that Dr. D., as Head Doctor of the national Olympic Team should have exercised greater supervision and control over the activities of the medical team and the athletes and coaches and, in particular, Mr. E. and Dr. D., upon the XIX Olympic Winter Games, Salt Lake City 2002.

The IOC Executive Board concludes that, through Dr. D.'s lack of supervision and control, he has facilitated doping offences to have happened and Dr. D. has therefore violated Paragraph 3 of Article 1 of the Olympic Movement Anti-Doping Code (...).

Considering the above, (...) the Executive Board of the International Olympic Committee decides to issue a strong warning to Dr. D.

On 12 June 2002, each of the five Appellants filed an individual Statement of Appeal with CAS, together with against the aforementioned respective decisions of the IOC EB dated 26 May 2002.

The hearing in Lausanne took place on 4 and 5 February 2003.

In their written Appeal Briefs, all of the Appellants requested that the respective decisions taken by IOC EB on 26 May 2002 be declared ill-founded and be set aside by the Panel.

On the merits, the Appellants based their appeals on the following arguments (i) that the definition of blood doping under the Olympic Movement Anti-Doping Code is unclear, (ii) that it is not conceivable that any blood administration be constitutive of doping, and (iii) that the IOC EB was wrong in saying that the autologous blood therapy performed by Mr. A. in this case was to be considered as doping, mainly as such method has no performance-enhancing effects and because it should be considered as a legitimate medical treatment under the circumstances.

At the hearing itself, the Appellants also challenged for the first time the applicability of the Olympic Movement Anti-Doping Code in their cases, as well as the competence of the IOC EB to pronounce the decisions of 26 May 2002 against the respective Appellants.

In its Answer, the IOC confirmed the arguments set out in the Decisions regarding the Appellants of 26 May 2002 and requested that the Appellants' appeal be dismissed, and that the Appellants be obliged to pay all the costs and expenses arising out of this arbitration.

Furthermore, the IOC suggested that the Items were not only used for the UV Blood Transfusion as described by Mr. A., but rather for "classical" blood doping, i.e. the withdrawal of major quantities of blood at an earlier stage and the re-injection of the blood with the goal of enhancement of oxygen transfer, or to reduce the blood haemoglobin below the cut-off level.

At the hearing, the IOC further submitted that the Appellants' opinion on the question of the lack of jurisdiction of the IOC EB to render the decisions at issue should be declared inadmissible, as a result of its having been presented at too late a stage in the proceedings, and in any event should be rejected on its merits.

The Panel considered the following relevant facts:

At the hearing, Mr. A. confirmed that he performed UV Blood Transfusions on his son B. on up to four occasions, between 19 January and 3 February 2002, in a chalet in Park City. He also confirmed that he performed one UV Blood Transfusion on Mr. C. immediately after the latter's arrival in Utah on 2 or 3 February 2002, also in Park City.

According to Mr. A., the Items were put into a plastic bag for later disposal. On 3 February 2002, when Mr. A. moved to the chalet where the Items were eventually discovered, he took the plastic bag with the Items with him.

The Appellants do not dispute that the residuals in the two 500 ml blood bags are Mr. C.'s and Mr. B.'s blood.

UV Blood Transfusion is a form of autologous blood therapy. It may be described as the process of removing, processing (through UV irradiation), and subsequently re-infusing the subject's own blood. Mr A. explained the method as follows:

- The athlete lies on a magnetic field mat.

- An amount of 45 to 50 ml of blood is taken from the athlete's vein and put into a 500 ml blood bag which contains anti-coagulant liquid.
- The blood bag is exposed to ultraviolet irradiation during exactly 3 minutes.
- The blood is passed through a filter. Depending on the particular needs, vitamins or other additives can be added to the blood.
- The blood is then re-injected into the athlete's vein.
- The same device ("butterfly") is used for the taking and re-injecting of the blood. During or immediately after the irradiation proceeding, this device can also be used to add glucose to the blood circulation.

Dr. Essers, in his expert witness statement and during the examination, confirmed the proceeding applied by Mr. A. being one of the recognised autologous blood therapies.

The Panel considers that the array of medical garbage found in a closet of the private chalet occupied by Mr. A. and some other members of the cross-country team is truly disturbing. It is a fact that the assortment of tubes, syringes, bottles and vials contained everything necessary to accomplish classic blood doping. It also contained sodium chloride which could be used to dilute a skier's blood haemoglobin below the cut-off level established by Fédération Internationale de Ski (FIS) for further EPO testing of urine. Also included in this medical waste were vials of iron and folic acid, which could be used to support the administration of EPO.

In his testimony Mr. A. denied having ever seen the sodium chloride, iron or folic acid. However, he and his wife lived in the chalet during the entire period the chalet was rented by the team. There is certainly reason to suspect that some form of doping was happening at the chalet at the time.

The IOC's suspicion that the paraphernalia found in the chalet were not utilised for UV Blood Transfusions, but rather for blood doping with the goal of enhancement of oxygen transfer, was further supported by the fact that 500ml bags were found whereas the UV Blood Transfusion, as described above, needed only 45 to 50 mL of blood. Dr. Essers also confirmed that he uses smaller bags in his practice. However, A.'s explanation that he used larger bags for more surface area to facilitate UV irradiation seems plausible.

The IOC also submits that (i) the amount of blood left in the transfusion equipment was so substantial that it was inconsistent with the UV Blood Transfusion described by Mr. A.; and that (ii) the coloration of the blood remaining in the transfusion bags was an indication of transfusions with packed red blood cells. However, the IOC did not ask for an analysis of the blood residuals, so that no conclusions can reasonably be drawn either from the amount of blood left in the tubes and bags, or from the colour of the residuals.

Although obviously troubled by the circumstances in which the UV Blood Transfusion was applied and the ensemble of other medical paraphernalia found in the house, which raises serious suspicions of other types of doping, the Panel is not prepared to say that it is comfortably satisfied - given the seriousness of the charge - that other blood manipulations constitutive of classic blood doping (e.g. blood doping with the goal of enhancement of oxygen transfer), masking (e.g. infusions for dilution

to avoid detection of prohibited substances or methods) were performed by or with the knowledge of Mr. A.

It must be noted that the IOC apparently reached the same conclusion after its investigation, because there is no mention in either the findings of the Inquiry Commission, or in the IOC EB's decisions, that masking or blood doping methods other than the UV treatment admittedly performed by Mr. A. were used.

The IOC asks the Panel to draw an inference of doping on account of the national Ski Federation's refusal to authorize FIS to provide the IOC with 2000 and 2001 blood test results for all members of the Ski Team. The Appellants made the blood tests of B. and C. available. They show no abnormal results. The IOC is also in possession of the blood test results of other Cross Country Skiers of the same country who competed and even won medals at the 2002 Winter Games. These tests have obviously not led to doping procedures. The Panel does not therefore see why any inference of doping should be drawn from the national Ski Federation's refusal to disclose earlier blood test results of other members of the Ski Team.

As regards Dr. D., the Panel found that he arrived *on site* at Salt Lake City on the day of the Opening Ceremony of the 2002 Winter Games which was held on 8 February 2002. This was at least four days after Mr. A.'s last application of UV Blood Therapy on his son and Mr. C. As Chief Medical Officer of the Nordic ski team, his functions consisted mainly of setting up in advance and supervising medical services during the Games to assist the Team members, coordinating doctors and medical care for athletes, and being present at competition venues in case of need. Dr. D. declared that he was not aware that any blood manipulation procedures had been performed by Mr. A. or Mr. E. at the 2002 Winter Games until after the end of the Games.

Concerning Mr. E., the Panel found that although accredited with the national Olympic Team as a chiropractor, Mr. E. is very self-confident as regards his healing abilities and was certainly inclined to perform medical acts on athletes (such as vitamin infusions) despite the fact that he was not entitled to do so. Mr. E. appeared to the Panel as being reluctant to any kind of supervision by medical staff. Nevertheless, the Panel is willing to accept Mr. E.'s testimony at the hearing that he performed no autologous blood treatments on athletes while in Utah for the Olympic Games. However, Mr. E. admitted, that he continued to treat several of his regular patients (including athletes from other national teams) also during his presence at the 2002 Winter Games. These treatments included also the application of injections.

LAW

1. The jurisdiction of the CAS *in casu* results
 - (a) from the entry form for the Winter Games 2002 signed by the Appellants (the "Entry Form");
 - (b) from Chapter III, article 1 of the OMAC, it being reiterated that any participant affected by a decision rendered in application of this Code by the IOC, an International Federation, a National Olympic Committee or other body may appeal from that decision to CAS, in accordance with the provisions applicable before such court;
 - (c) from Rule 47 of the Olympic Charter, which states:
"Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration."
 - (d) from the signature on behalf of the Appellants of the Order of Procedure.
2. The Appellants claim that the IOC EB was not competent to hear the case and sanction the Appellants. However, the jurisdiction of CAS does not depend on the answer to that question but is in fact based on every single provision listed above.
3. The primary source of law is the Olympic Charter. Certain specific rules are set out in the OMAC as issued and amended in 1999, including Appendix A (Prohibited Classes of Substances) as amended from time to time and the Explanatory Memorandum to the OMAC. The OMAC has been accepted by the Appellants when they signed the Entry Forms. With respect to its applicability, the OMAC states on page 5, paragraph 5:
"Whereas the Olympic Movement Anti Doping Code applies to the Olympic Games, the various championships and all competitions to which the International Olympic Committee (IOC) grants its patronage or support and to all sports practised within the context of the Olympic Movement, including pre-competition preparatory periods".
4. The fact that the UV-Blood Transfusions were performed before the Opening Ceremony of the 2002 Winter Games does not stand in the way of the application of the OMAC. The expression "during the Olympic Games" has been defined in the "Explanatory Memorandum concerning the application of the Olympic Movement Anti-Doping Code", 1999, p. 5:
"During the Olympic Games" means the period starting with the official opening of the Olympic Village (...) whether or not the athlete is there (...)".
5. The Olympic Village for the 2002 Winter Games was opened on 25 January 2002. At least with respect to the UV-treatments applied on B. and C. on or after 25 January 2002, the OMAC is undoubtedly applicable.
6. In addition, the OMAC is also applicable during the "pre-competition preparatory periods". In the context of the Olympic Games, such preparatory period must be understood to comprise

at least the period during which an athlete is preparing *on site* for the Olympic competitions, thereby utilizing the infrastructure of the Olympic Games (e.g., accreditation, transportation, designated training sites).

7. The World Anti Doping Code ("WADC") referenced by Appellants has only recently been approved and is therefore not applicable in the present case. Further, the provision in the WADC relied on by the Appellants has subsequently been changed. The Panel will also not base its decision on the Medical Guide of the FIS which is superseded by the OMAC during the Olympic Games.
8. The main issues to be resolved by the Panel are:
 - (a) Was the IOC EB competent to issue a sanction against the Appellants?
 - (b) If yes: Did the IOC EB violate the minimum requirements regarding due process by not explicitly referring to the witness statement of Dr. Frick ?
 - (c) Does the UV-Blood Transfusion as admittedly performed by Mr. A. qualify as Prohibited Method according to the OMAC ?
 - (d) If yes: Does the UV-Blood Transfusion as performed by Mr. A. have to be considered as legitimate medical treatment ?
 - (e) If UV-Blood Transfusions as performed by Mr. A. are considered as a prohibited method: did Dr. D. or Mr. E. facilitate the use of doping?
 - (f) Do the treatments performed by Mr. E. at the 2002 Winter Games have to be considered infractions on regulations applicable during these Games?
9. The Appellants assert that the IOC EB was not competent to render a decision because the UV-treatment did not occur "during the Games." This issue was not raised in the Appellants' hearing before the IOC EB, nor was it raised in any of the briefs filed in connection with the Appellants' appeals. The respective objection was only made in the opening statement of Appellants' Counsel and accordingly is not admissible (Article R56 of the Code).
10. The argument fails also on the merits: the competent body to decide upon a sanction "in the context of the Olympic Games" is the IOC EB, as defined in Rule 25, para. 2.2 of the OC. Furthermore, the IOC Executive Board is also the "authority responsible" for the enforcement of the OMAC as clarified in the Explanatory Memorandum, p. 5 second last paragraph.
11. The Appellants suggest by referring to Chapter VI, Article 4 of the OMAC, that the IOC EB should have requested the advice of the IOC Medical Commission before imposing a sanction for doping. The Panel disagrees. Firstly: This objection was also not raised in good time (i.e. in the written submissions). Secondly: The IOC EB based its decision on a thorough report of an ad hoc Inquiry Commission which consisted of two learned members of the IOC Medical Commission (Denis Oswald and Patrick Schamasch, IOC Medical Director). There was no need to request further members of the IOC Medical Commission for advice.

12. The IOC EB was therefore competent to render a decision with respect to the behaviour of the Appellants.
13. The Appellants complain that the decision of the IOC EB did not explicitly refer to the witness statement of Dr. Frick. However, according to the Appeal Briefs, this witness statement was submitted to the IOC EB before the hearing in Kuala Lumpur, and the Appellants' Counsel "quoted certain statements made by the medical expert Gerhard Frick". The Panel is therefore satisfied that the Appellants' procedural rights have been sufficiently observed. Due process does not require that all documents submitted to a sanctioning body must be quoted in the written decision. In any event, since the Panel has the power to review the case *de novo* (Article R57 of the Code), any procedural deficiency may be cured in the appeals procedure.
14. The relevant definitions in the OMAC are the following:

Chapter I

Article 1

DEFINITIONS

Blood Doping means the administration of blood, red blood cells and related blood substances to an athlete, which may be preceded by withdrawal of blood from the athlete who continues to train in such a blood-depleted state.

Chapter II

Article 1

1. *Doping contravenes the fundamental principles of Olympism and sports and medical ethics.*
2. *Doping is forbidden.*
3. *Recommending, proposing, authorising, condoning or facilitating the use of any substance or method covered by the definition of doping or trafficking therein is also forbidden.*

Article 2

Doping is:

1. *The use of an expedient (substance or method) which is potentially harmful to athletes' health and/or capable of enhancing their performance, or*
2. *The presence in the athlete's body of a Prohibited Substance or evidence or the use thereof or evidence of the use of a Prohibited Method.*

Appendix A Prohibited classes of substances and Prohibited Methods

II Prohibited Methods

The following procedures are prohibited:

1. *Blood doping*
2. *Pharmacological, chemical and physical manipulation*

15. The UV Blood Transfusion includes the administration of blood to an athlete. If read literally, the definition of Blood Doping (Chapter 1, Article 1 of the OMAC) is undoubtedly met, irrespective of the amount of blood withdrawn and re-injected. The second half-sentence ("...

which *may* be preceded by withdrawal of blood from the athlete who continues to train in such a blood-depleted state" [emphasis added]) is not a necessary element of that definition but must only be understood as one example of Blood Doping. It makes clear, however, that the definition includes the administration of the athlete's *own* blood as well.

16. The "evidence of the use of a Prohibited Method" qualifies as Doping (Chapter II, Article 2, para. 2). Blood Doping is a Prohibited Method as defined in Appendix A, Chapter II of the OMAC. Once a certain method is identified as Prohibited Method, it must be considered as doping whether or not it is potentially harmful to athletes' health and/or capable of enhancing their performance (Chapter II, Article 2, para 1). These additional attributes apply only to substances or methods not listed as Prohibited Substances or Prohibited Methods in Appendix A to the OMAC. Having identified UV Blood Transfusion as a Prohibited Method, there is no need to investigate further whether it may harm the athletes' health or enhance their performance.
17. However, both parties suggest that the Panel ought to read Chapter I Article 1 of the OMAC "intelligently" so that it would not apply, e.g., to the administration of blood via transfusion during surgery at a hospital or other circumstances in which blood transfusions must be considered as legitimate medical treatment. That is why the definition of Blood Doping has been amended in Appendix A of the OMAC as per 1 January 2003:

II Prohibited Methods

The following procedures are prohibited:

A. Enhancement of Oxygen Transfer

a. Blood doping

Blood doping is the administration of autologous, homologous or heterologous blood or red blood cell products of any origin other than for legitimate medical treatment. (emphasis added)

18. The Panel is ready to accept, in principle, the legitimate medical treatment-reservation either as an implied element of the definition of Blood Doping in the OMAC in force at the 2002 Winter Games, or by reference to the amended definition of Blood Doping of 1 January 2003 quoted in paragraph 0 above, thereby relying on the *lex mitior*-principle as applied by analogy e.g. in TAS 96/156 F. c/FINA.
19. The administration of blood, allegedly for legitimate medical purposes may be abused as an alibi for illegal purposes such as blood doping, performance enhancing or masking of prohibited substances or methods. The conditions under which a certain medical treatment, which would otherwise fall under the definition of doping, may be justified are truly exceptional and must therefore be demonstrated by the athlete or the person performing such treatment. To determine whether a certain medical treatment is legitimate under the OMAC, the Panel applies the following test:
 - (a) The medical treatment must be necessary to cure an illness or injury of the particular athlete;
 - (b) Under the given circumstances, there is no valid alternative treatment available which would not fall under the definition of doping;

- (c) The medical treatment is not capable of enhancing the athlete's performance;
 - (d) The medical treatment is preceded by a medical diagnosis of the athlete;
 - (e) The medical treatment is diligently applied by qualified medical personnel in an appropriate medical setting;
 - (f) Adequate records of the medical treatment are kept and are available for inspection.
20. To determine whether a certain cure may be considered as a legitimate medical treatment, it is indispensable for any person performing medical or para-medical services to be familiar with the OMAC. Ignorance is not an excuse but constitutes a substantial risk especially for the athletes. In the event of doubt and to avoid the risk of doping allegations, the medical staff of the NOCs are strongly advised to contact the IOC Medical Commission in time and seek its approval.
21. The Panel has no basis to put into question that UV Blood Transfusion appears to be the only effective relief against the neurodermatitis of B. There was no comparable explanation for the UV Blood Transfusion. Indeed, Mr. C.'s condition was described in the Appeal Brief as "severe nausea" and "problems with his bronchial system", which was not sufficiently serious for him to seek any other medical treatment.
22. The Panel also accepts that the UV Blood Transfusion as described by A. and Dr. Essers is hardly capable of enhancing an athlete's performance.
23. However, the Panel finds that in this case the other indicia of legitimate medical treatment were not met: The UV Blood Transfusions were administered in a private chalet by a coach with no medical support and without supervision of, or disclosure to, the team doctor, the IOC Medical Commission or the team management. The UV Blood Transfusions were not even documented by proper records. The strange circumstances under which the blood manipulations were carried out combined with the fact that such manipulations were performed on endurance athletes created inevitably a massive suspicion of some other forbidden doping techniques. If UV Blood Transfusions were to be tolerated under such circumstances, this would be an invitation for all kinds of uncontrollable blood manipulations with the ultimate aim of performance enhancement.
24. The Panel concludes that the UV-Blood Transfusion administered by A. on B. and C. in the Park City chalet did not meet the above test for legitimate medical treatment and must therefore be considered as blood doping.
25. Although the UV Blood Transfusion is certainly on the fringe of ordinary medicine, the Panel is not prepared to say that it can *never* be a legitimate medical treatment. Indeed, as Dr. Essers testified, it is used by more than a thousand medical doctors in Germany and is practiced and taught at his University. However, when exercising such methods which are not (yet) recognised as part of "school medicine", a medical practitioner has to be particularly careful to avoid any suspicion of prohibited activities.

26. It is established that A. administered a Prohibited Method under the OMAC. He professed ignorance of the OMAC and the articles prohibiting Blood Doping. This ignorance is totally inconsistent with his high position in a sport where manipulation of blood is the greatest threat to the integrity of sporting competition. It is particularly incredible that in light of his professed ignorance he took it upon himself to perform medical techniques related to the withdrawal and re-administration of blood.
27. In some respects A.'s explanation for administering ultraviolet autologous blood treatment to his son is compelling. He describes his son as a toddler whose skin condition was diagnosed as incurable by modern medicine and who had to be handcuffed to his bed to prevent him from scratching his skin off. Certainly any father would want to do everything possible to cure his son. The circumstances here, however, are not so simple. His son did not receive his first autologous blood treatment until 2000. Somehow he had managed to be a competitive cross-country skier for several years before that. Further, this was not just any alternative medical treatment, it involved the administration of blood to an endurance athlete in a sport where every participant's intuition would have told him that at a minimum this is all going to look incredibly suspicious. Indeed, B. even discussed with his father whether the UV Blood Transfusion was legal under applicable anti-doping rules. A. did nothing to confirm that it was.
28. Mr. A. holds a position of substantial authority within the national cross-country ski program. He was a successful competitor, a national team coach and the team manager for the national cross-country ski team. In his own words he was the "boss." With this authority comes the responsibility to look after the young athletes who have been entrusted to his care. It is obvious, based on the medical paraphernalia found in the closet of the cross-country team's chalet, that some very suspicious activities were taking place. Mr. A.'s denial of any knowledge of much of this equipment found in the house in which he lived and where he was supposed to be supervising the athletes who also were there is certainly irresponsible even if it does not rise to the level of a provable doping violation. The administration of a prohibited method to young athletes who put their trust in him to know what he was doing, with the resulting consequences on their lives, is inexcusable.
29. The Panel finds the conduct of Mr. A. incredible. He was described as having been involved in the sport of cross-country skiing all his life. It was also stated that as a competitor he had been the victim of other competitors who cheated using blood doping. Indeed, anyone who has any knowledge or involvement with the sport of cross-country skiing knows that the manipulation of blood to increase oxygen-carrying capacity has been and continues to be a serious problem in that sport and other endurance sports. In these same Olympic Games three other cross country skiing athletes were sanctioned for the use of darbepoetin to enhance the oxygen-carrying capacity of their blood. Thus anyone who is engaged in the manipulation of a cross-country skier's blood should know that they are entering into extremely dangerous territory as far as doping is concerned. Mr. A.'s failure to talk with any sporting official at the Olympic Games or otherwise about whether this method was permissible under anti-doping rules is almost inconceivable and is certainly inexcusable.

30. A.'s use of this method on C. is particularly egregious. Mr. A.'s symptoms were not acute. During the hearing, they were described as "parched throat". These symptoms were apparently not severe enough for Mr. C. to seek real medical treatment either before he left for the 2002 Winter Games or after he arrived in Utah. While Mr. C. probably should have known better, he trusted in his long-time coach who, as counsel for the Appellants pointed out, was sometimes referred to as "father A." by Mr. C. in his testimony.
31. A. has applied a Prohibited Method to athletes and thereby violated Art. 1.2, Chapter II of the OMAC in the context of the Olympic Games. The Panel sees no reason to reduce the severe sanction imposed by the IOC Executive Board (i.e. ineligibility to participate in all Olympic Games up to and including the Olympic Games held in 2010).
32. As a result of the Panel's finding that the UV Blood Transfusion employed by A. on B. and C. was blood doping as defined in the OMAC, they must be considered to have been doped by using a Prohibited Method.
33. In this case and under these circumstances both B. and C. should have had some suspicion that a method in which their blood was removed, manipulated and re-injected might run afoul of anti-doping rules. Indeed B. was discerning enough to raise this question with his father. However, the Panel agrees with the IOC's conclusion that it is A. and not the athletes who are the real culpable party in this situation.
34. The UV Blood Transfusion was administered during the Olympic Games but out-of-competition. The question is whether Chapter II, Article 3(3) of the OMAC applies:
"Any case of doping during a competition automatically leads to an invalidation of the result obtained (with all its consequences, including forfeit of any medals and prizes) ..."
35. The Panel shares the holding in CAS 2002/A/374 M. v/IOC, Section VII. The Panel in M. concluded by reference to Chapter II, Article 3(3) of the OMAC ("The penalty for an offence committed by a competitor and detected on the occasion of an out-of-competition test shall be the same, *mutatis mutandis*, ..."), "that where an athlete commits an out-of-competition doping offence, at least all the results obtained after the date the sample was taken shall be invalidated". This must be equally true if the doping offence consisted of the application of a Prohibited Method instead of a Prohibited Substance.
36. The same conclusion results from the application of the Olympic Charter. The doping offence took place during the Olympic Games, and therefore the Olympic Charter is applicable. There is no question that the use of a Prohibited Method during the Olympic Games is an infringement of the Olympic Charter. Rule 50 of the Olympic Charter says:

50. *Infringement of the Olympic Charter*

The IOC Executive Board may withdraw accreditation from any person who infringes the Olympic Charter. Furthermore, the competitor or team at fault shall be disqualified and lose the benefit of any ranking obtained; any medal won by him or it shall be withdrawn, as well as any diploma which has been handed to him or it.

37. Thus, the consequence of Messrs. B. and C. having used a Prohibited Method during the Olympic Games is their automatic disqualification from the 2002 Winter Games including all results
38. The statements of the parties led the Panel to conclude that the medical team at the Salt Lake Olympic Games was, to put it in the most favorable light, not well organized. Dr. D. was in charge of supervising the team of doctors present at the Games but the athletes preferred treatment from chiropractors like Mr. E., other paramedical personnel and coaches like Mr. A. who had no formal medical training whatsoever. This anomalous situation was compounded by the apparent fact that according to both Dr. D. and Mr. A. "no one" supervised the chiropractors and other paramedical personnel! The victims of this dysfunctional system were the athletes. In the words of Alexander Marent, another athlete of the same country whose signed statement was presented to the Inquiry Commission: "We do not have a team doctor at our disposal and therefore we have to find our own ways to be properly treated".
39. Dr. D.'s testimony indicated that he was oblivious to the medical reality of the cross-country ski team for which he was the specific doctor responsible. He testified that he had no knowledge of post-race infusions of glucose by cross-country skiers and yet the two athletes before the Panel, B. and C., both said they received post-race infusions of glucose and, judging from the bag of medical paraphernalia found in the closet of the chalet, other cross-country skiers of the same team did as well. It is ironic that Dr. D. went to the chalet on two or three occasions for dinner, apparently unaware of all of the non-medically-supervised injections and infusions that were taking place in the house.
40. The Panel does not find it acceptable that Dr. D. as the chief medical official of the national Team would be content to remain blissfully ignorant or turn a blind eye toward the paramedical or non-medical treatment of cross-country skiers. His explanation that he unsuccessfully asked the national Olympic Committee for the names of the chiropractors attending the Games falls short of a satisfactory response.
41. Certainly the national Olympic Committee is partly to blame for the dysfunctional organization of the medical program at the Games. However, the Panel is also convinced that Dr. D.'s personal conduct was not up to the standard which the IOC is entitled to expect from a doctor to whom it has issued a medical credential for the Games. Obviously, he was not sufficiently aware of the particular needs of the athletes and tolerated their receipt of medical treatment without any supervision from a physician. Such behaviour is not in accordance with the Ethical Guidelines for Health Care in Sports Medicine in the Medical Care Guide for the Salt Lake 2002 Olympic Winter Games ("Medical Care Guide"), and in particular, the following provisions thereof:

1. Introduction

(...)

Health care professionals travelling with their National Olympic Committees (NOC) will be exempt from Utah state license requirements allowing them to provide medical services to members of their own delegation

3. Ethical Guidelines for Health Care in Sports Medicine

1. *All physicians who care for athletes have an ethical obligation to understand the physical, mental and emotional demands placed upon athletes during the training for and participation in their sports.*

(...)

4. *It is the responsibility of all physicians to be cognizant of the changes that occur in the medical management of the athletes. This is to ensure that physicians provide optimal care for the athletes.*

(...)

9. *The team or contest physician is responsible for determining whether an injured athlete may continue to compete. This responsibility should not be delegated to other professionals or personnel. These professionals, in the physician's absence, must adhere strictly to the provided guidelines. At all times, the priority must be safeguarding the athlete's health and security. The potential outcome of a competition must never influence such decisions.*

(...)

11. *A physician who opposes a procedure should inform the athlete and other relevant parties of the procedure's consequences. The physician should guard against the procedure's use by others, enlist the support of other physicians and organisations with similar aims and protect the athlete from any pressures that may induce him or her to use these methods.*

(...)

13. *To undertake these ethical obligations, the physician must insist on professional autonomy over all medical decisions concerning the health and the safety of the athlete, neither of which should be compromised to assist the interest of any third party.*

42. The Medical Care Guide requires the responsible team physicians to be immediately engaged in the medical treatment of the entrusted athletes, either by their own involvement or by adequate supervision of medical personnel. By tolerating the performance of medical services by physiotherapists such as E. in violation of the Medical Care Guide (i.e., illegal injections; treatment of athletes of other NOC delegations), or even of coaches without any supervision by a physician, Dr. D. did not act in accordance with these Ethical Guidelines. His excuse, that he felt responsible only for doctors and not for other members of the team who performed medical or para-medical services on athletes, is not acceptable.

43. According to Rule 6.12 of the Olympic Charter, the IOC EB

6.1.2 (it) enacts, in the form it deems most appropriate, (codes, rulings, norms, guidelines, instructions) all regulations necessary to ensure the proper implementation of the Olympic Charter and the organisation of the Olympic Games;

44. Rule 25 of the Olympic Charter says:

2.2 *[Measures and Sanction] in the context of the Olympic Games:*

2.2.2 with regard to officials, managers and other members of any delegation as well as referees and members of the jury: temporary or permanent ineligibility or exclusion from the Olympic Games (Executive Board)

3. *Before applying any measure or sanction, the competent IOC organ may issue a warning.*

45. In order to ensure the proper organization of the medical services at the 2002 Olympic Games, the Panel finds that the IOC EB was entitled to issue Guidelines such as the Medical Care Guide and to impose a sanction in the event of a violation of the Guide. The strong warning issued by the IOC EB to Dr. D. is not an excessive disciplinary sanction in the circumstances.
46. The allegation of the IOC that a physician has facilitated doping is a very serious allegation. Indeed, in the Panel's view it is not one which would warrant only a "strong warning". The Panel is satisfied, however, that Dr. D. did not commit a doping offence by facilitating doping committed by any of the other Appellants. Facilitating doping by passivity (in other words: to tolerate doping) requires at least that one is or should be aware of the application of prohibited substances or methods. The Panel is not convinced that Dr. D. knew or should have known that A. would be performing UV Blood Transfusions during the Games. Indeed, the only treatments which Mr.A. admitted, took place *before* Dr. D.'s arrival in Utah. Even if Dr. D. had an obligation to supervise the medical services performed by team members other than physicians, he was not obliged, either by the OMAC or by the 2002 Salt Lake Medical Care Guide, to actively launch an investigation into charges of doping without any further indications.
47. The evidence before the Panel is that Mr. E. is a gifted healer. Dr. D. described him as having "blessed hands." Dr. D. himself, as well as many well-known athletes and other individuals, have sought treatment from Mr. E. at his office in Bayrischzell, Germany.
48. Mr. E. is not a certified physician. He is licensed in Germany as a certified *Heilpraktiker*. This license apparently allows him to perform physiotherapy, chiropractic techniques and to give injections. As a non-medical practitioner, he would not be allowed to give injections in either the country X. or the state of Utah (Occupational and Professional Licensing Act 1993, Utah Code § 58-1-501 (1) (a)). As reflected in the Salt Lake 2002 Medical Care Guide, an exemption was obtained to the Utah Occupational and Professional Licensing Act prohibiting the unauthorized practice of medicine for the benefit of healthcare professionals attending the Games (Utah Code Ann. § 58-1-307 (1)(h): Exemptions from licensure):
- 1) *Except as otherwise provided by statute or rule, the following persons may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:*
 - (b) *an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity as a spectator;*
49. However, this exemption only applied to healthcare professionals performing services on their own team members and as allowed by the laws of their team's country (Medical Care Guide, Article 5):
- (...) *This legislation will enable team health care professionals to:*
- *Treat members of their team*

- *Use pharmaceutical from the team's supply*
- *Prescribe medication for members of their team, if current professional license allows.*

50. In violation of this exemption, Mr. E. performed services on athletes from other countries. He also gave injections to athletes which he would not have been permitted to do under the law of his country.
51. Although Mr. E. had apparently already treated many of the athletes who sought his services at his office in Bayrischzell, and his purpose was undoubtedly only to help, his unauthorized practice of medicine in Utah is nonetheless a serious matter. Mr. E.'s presence in Salt Lake City and his access to athletes was under the auspices of his IOC credential. He certainly should have known that there was a serious legal issue with him giving injections outside of Germany and treating athletes from countries other than the country X.
52. Mr. E.'s testimony also left the Panel with the impression that he is sufficiently confident in his healing abilities and that he might not be overly concerned about the technical niceties of medical licensing ("nobody supervises me"). The Panel concludes that the rather liberal way in which Mr. E. provided medical and para-medical services to athletes of various countries was not in accordance with the Salt Lake Medical Care Guide and so a strong warning is justified (for the legal base of such sanction, see also paragraph 0 above).
53. However, the Panel is not satisfied that there is sufficient evidence to find that E. engaged in doping in connection with the 2002 Winter Games. E. testified that he had nothing to do with the paraphernalia found in the chalet and that he did not perform any type of autologous or other blood manipulation while he was at the 2002 Winter Games. The Panel was not presented with sufficiently concrete evidence to the contrary to cause it to disregard his testimony.
54. The autologous blood method used by Mr. E. in his practice at home is considerably different from the UV blood transfusion used by A. The method used by Mr. A. does not involve all of the paraphernalia commonly associated with classic blood doping. His testimony was that his typical technique was to remove several drops of blood from a vein and re-inject it into the *gluteus maximus* as an irritant. While this technique may run afoul of the literal language of the OMAC's definition of blood doping, it is not nearly as susceptible to all of the masking or alibi concerns as the method employed by A. However, there is no need to investigate further whether such autologous blood method falls under the definition of doping or whether such method, applied by Mr. E. in his practice in Bayrischzell must be considered as legitimate medical treatment, since there was no evidence presented that during the 2002 Winter Games Mr. E. actively "recommended" or "proposed" the use of such autologous manipulations or any other methods covered by the definition of doping. While the Panel does not believe that the behaviour of E. in Salt Lake would justify a more severe sanction than a strong warning, the IOC is, of course, still free to refuse accreditation to further Olympic Games if there were indications that E. would continue to evade supervision of the medical team management.

The Court of Arbitration for Sport hereby rules:

1. The Appeals filed by A., B., C. and Dr. D. are dismissed.
2. The Appeal filed by E. is partially upheld.
3. The CAS renders the following decision:
The ineligibility of E. to participate in all Olympic Games up to and including the Olympic Games held in 2010 is replaced by a strong warning.
4. (...).