

ANADO Legal Note 8: An Athlete’s Right to Witness the B Sample Analysis

Does an athlete have a right to attend the B sample opening and analysis? Even if the Anti-Doping Organization wants to accelerate the analysis to determine that athlete’s status for up-coming competitions? Yes, according to a recent Court of Arbitration for Sport (CAS) Panel.

In *Varis v. IBU* (CAS 2008/A/1607)¹, decided 13 March 2009, there was an adverse analytical finding in the A sample for EPO. The athlete had previous anti-doping rule violation in 2003 also for EPO. The athlete requested A sample documentation package before B sample analysis would be conducted. The International Biathlon Union (IBU) anti-doping rules had not implemented 2009 *International Standard for Laboratories* (ISL) which requires the B sample analysis to commence within seven working days of notification of the A sample result (IBU rules set a three week time period). Because of up-coming World Cup event, IBU instructed lab to conduct B sample analysis in athlete’s absence but in the presence of an independent expert. The B sample analysis confirmed A sample analysis and athlete banned for life by the IBU for second anti-doping rule violation.

On appeal, CAS overturned anti-doping rule violation and the life ban. It found that the IBU had failed to take any steps to accommodate athlete’s request to be present at B sample opening. In failing to do so, the IBU followed neither its own rules nor the new ISL. Naming an independent expert to be present as a surrogate for the athlete was insufficient in absence of any effort to permit the presence of the athlete or athlete’s representative. The Panel stated: “Because of the significance of the consequences for an athlete facing a life ban as result of an alleged anti-doping rule violation, it is important that procedures are followed correctly and that information concerning the rights and remedies of an athlete is communicated clearly.”

As Anne Brown recently noted in her “Quality Spotlight” note in the March 2009 ANADO Quality Program Newsletter, Article 5.2.4.3.2.1 of the new ISL provides only a seven working day period from notification of the A sample adverse analytical result for commencement of the B sample analysis. In light of *Varis*, it is all the more important that Anti-Doping Organizations work quickly to provide athletes with an opportunity to attend the B sample analysis in that seven working day period. One can proceed with the B sample in the athlete’s absence with confidence if appropriate efforts have been made for the athlete or his/her representative to attend.

If there is any doubt about those efforts, and / or that athlete cannot attend, I believe the B sample confirmatory analysis should *always* proceed, recognizing the risk of arguments that the athlete’s rights were not observed.

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¹<http://www.tas-cas.org/d2wfiles/document/3082/5048/0/Award%201607%20Final%20internet.pdf>

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