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FINA Doping Panel 19 August 2020

FINA Doping Panel

comprised of

Robert Fox	(SUI)	Chairman
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Peter Kerr	(AUS)	Member

In the proceedings against

the swimmer **Mauricio Fiol Villanueva** (“the
Athlete”)
affiliated to the Federación Deportiva Peruana de Natación (“FDPN”)

I THE PARTIES

1.1 The FEDERATION INTERNATIONALE de NATATION (“**FINA**”) is the International Federation governing the sport of Aquatics. FINA has established and is carrying out, *inter alia*, a doping control program, both for in-competition as well as out-of-competition testing.

1.2. The FDPN is a member of FINA. FDPN is required to recognize and comply with FINA’s anti-doping rules which are set out in the FINA Doping Control Rules (“**FINA DCR**”). As per its Introduction -Scope Section the FINA DCR is directly applicable to and must be followed by, *Competitors, Competitor Support Personnel, coaches, physicians, team leaders, and club and representatives* under the jurisdiction of the FDPN.

1.3 The Athlete is a 26-year old international-level swimmer from Peru. He represented Peru in the London 2012 Olympic Games. On 16 March 2017, the Court of Arbitration for Sport delivered an arbitral award dismissing the appeal brought by the Athlete against the decision of the Doping Panel of the FINA, which found – by a decision rendered on 14 March 2016 – that the former had committed an anti-doping rule violation pursuant to FINA Rule DCR 2.1 for the presence of Stanazolol in a sample collected on 12 July 2015 on the occasion of the 2015 Pan American Games in Toronto, Canada. Thus, the four-year ban imposed on the Athlete commencing on 12 July 2015 was upheld. The Athlete was in addition disqualified of the results and forfeited of any medals, points and prizes achieved from that date. The Athlete’s period of ineligibility ran until 11 July 2019. As per Article 10.12.1 of the FINA DCR, the Athlete remained subject to the FINA DCR during his period of ineligibility. Moreover, the FDPN had officially selected the Athlete to participate in the Pan American Games in Lima, Peru from 26 July 2019 until 11 August 2019. As a member of FDPN, the Athlete was (and still is) subject to the FINA DCR.

II NATURE OF THE CASE, FACTUAL BACKGROUND AND PROCEDURAL HISTORY

2.1 On 30 June 2019 a first sample was collected from the Athlete out-of-competition by the International Testing Agency (hereinafter the “ITA”) on behalf of FINA (hereinafter referred to as “Sample 1”).

2.2 On 7 July 2019 a second sample was collected from the Athlete out-of-competition by the ITA on behalf of FINA (hereinafter referred to as “Sample 2”).

2.3 On 12 July 2019, a third sample (hereinafter referred to as “Sample 3”) was collected from the Athlete in-competition by the *Comision Nacional de Control de Dopaje de Chile* (hereafter the “CNCD”).

2.4 On 22 July 2019, the WADA-Accredited laboratory in Montreal informed FINA that Sample 1 had returned an adverse analytical finding (hereinafter referred to as “AAF” for prohibited substance Stanazolol. Stanazolol is a Prohibited Substance under the Class S1 (Anabolic Agents) as stipulated in the WADA Prohibited List 2019. Stanazolol is not a Specified Substance. According to FINA DCR 4, the FINA DCR incorporate the WADA Prohibited List.

2.5 On 25 July 2019, the WADA-Accredited laboratory in Montreal informed FINA that Sample 2 had returned an AAF for the prohibited substance Stanazolol.

2.6 On 31 July 2019 FINA wrote to the Athlete notifying him about the AAFs of Sample 1 and Sample 2. The Athlete was informed that the aforesaid constituted a potential violation of the FINA DCR and was

granted the possibility to request the analysis of the B samples of Sample 1 and Sample 2.

2.7 On 3 August 2019, FINA, according to FINA DCR 7.9.1, provisionally suspended the Athlete.

2.8 On 9 August 2019, the Athlete requested the analysis of the B samples of Sample 1 and Sample 2.

2.9 On 12 August 2019, a fourth Sample was collected from the Athlete out-of-competition by the International Doping Tests & Management (hereinafter the "IDTM") on behalf of FINA (hereinafter referred to as "Sample 4").

2.10 On 30 August 2019, the WADA-Accredited laboratory in Montreal informed FINA that Sample 4 had returned an AAF for the prohibited substance Stanozolol.

2.11 On 1 September 2019 a fifth sample was collected from the Athlete out-of-competition by the ITA on behalf of FINA (hereinafter referred to as "Sample 5").

2.12 On 6 September 2019, the B sample analysis of Sample 1 and Sample 2 took place at the WADA-Accredited laboratory in Montreal, Canada. As the Athlete declined to attend, a surrogate representative was present to witness the process.

2.13 On 17 September 2019 a sixth sample was collected from the Athlete out-of-competition by the ITA on behalf of FINA (hereinafter referred to as "Sample 6").

2.14 The same day, the WADA-Accredited laboratory in Montreal informed FINA that the analyses of the B samples of Sample 1 and Sample 2 had confirmed the Presence of the prohibited substance Stanazolol.

2.15 On 20 September 2019, the WADA-Accredited laboratory in Châtenay-Malabry informed the CNCD that Sample 3 had returned an AAF for the prohibited substance Stanazolol.

2.16 On 24 September 2019, FINA wrote to the Athlete notifying him that the analysis of the B samples of Sample 1 and Sample 2 confirmed the presence of the prohibited substance Stanazolol. The Athlete was formally charged with a violation of the FINA DCR 2.1 for Presence. He was also informed that his case would now be forwarded to the FINA Doping Panel who would render a decision. The Athlete acknowledged receipt of this communication.

2.17 On 27 September 2019, the CNCD wrote to FINA to request that it conducts the results management pertaining to the AAF of Sample 3 as the CNCD did not have authority to conduct Results Management under its own rules.

2.18 On 2 October 2019, the WADA-Accredited laboratory in Montreal informed FINA that Sample 5 had returned an AAF for the prohibited substance Stanazolol.

2.19 On 18 October 2019, the WADA-Accredited laboratory in Montreal informed FINA that Sample 6 had returned an AAF for the prohibited substance Stanazolol.

2.20 On 20 November 2019, FINA wrote to the Athlete notifying him about the AAF of Sample 4 for the prohibited substance Stanazolol. The

Athlete was granted the possibility to request the analysis of the B sample. He was also informed of the consequences in the event of multiple violations of the FINA DCR pursuant to FINA DCR 10.7.

2.21 On 18 December 2019, FINA sent a reminder to the Athlete expressly indicating him that without any reply by 23 December 2019, it would be assumed that he had waived his right to request the B sample analysis for Sample 4.

2.22 On the same day, FINA notified the Athlete about the AAFs for Stanozolol in relation to Sample 5 and Sample 6. The Athlete was granted the possibility to request the analysis of the B samples.

2.23 On 6 January 2020, FINA wrote to the Athlete notifying him about the AAF in relation to Sample 3. The Athlete was informed that FINA would be conducting results management for this AAF in accordance with Article 7.8 of the FINA DCR. The Athlete was granted the possibility to request the analysis of the B sample.

2.24 On 6 January 2020, FINA wrote to the Athlete and took note that, as he had not responded in time, he had waived his right to the B analysis for Sample 4.

2.25 On the same day, FINA sent a reminder to the Athlete expressly indicating him that without any reply by 13 January 2020, it would be assumed that he had waived his right to request the B analysis for Samples 5 and 6.

2.26 On 14 January 2020, FINA took note that having failed to respond to the previous communications, the Athlete had waived his right to the B sample analysis of Samples 5 and 6, collected on 1st and 17 September 2019.

2.27 On 14 January 2020, FINA sent a reminder to the Athlete expressly indicating to him that without any reply by 17 January 2020, it would be assumed that he had waived his right to request the B sample analysis for Sample 3.

2.28 On 20 January 2020, in the absence of a response from the Athlete, FINA took note that he had waived his right to the B sample analysis Sample 3, collected on 12 July 2019.

2.29 On 20 January 2020, FINA referred the case of the Athlete to the FINA Doping Panel for an eventual hearing and adjudication.

2.30 On 5 February 2020, the Athlete received a letter from the FINA Doping Panel Chairman informing him about the fact that the matter had been transferred to the FINA Doping Panel's jurisdiction for a possible hearing and a decision. He was provided a deadline to 20 February 2020 to inform the FINA Doping Panel of his wish to have a hearing or not. He was informed that in the event he did not want a hearing, he could file a brief and evidence to state his position within the same deadline.

2.31 On 6 March 2020, as he had not responded to the first letter, the FINA Doping Panel Chairman once again wrote to the Athlete giving him a deadline to 16 March 2020 to respond regarding a hearing or to file his defence.

2.32 On 27 April 2020, in light of the Athlete's silence, the FINA Doping Panel provided him with the composition of the Panel and informed him that a decision would be rendered *in camera*. He was set a deadline to 28 April 2020 to dispute the composition of the Panel and 7 May 2020 to file any defence. This letter was also sent to FINA and the same deadline

set in order for FINA to file its submissions in this matter and state the proposed sanction it deemed relevant.

2.33 By letter dated 7 May 2020, FINA requested an extension of the aforementioned deadline. This extension was granted to 15 May 2020.

2.34 On 6 and 13 May 2020, following a FINA complementary request for information, Prof. Jordi Segura, Chairman of the FINA Doping Control Review Board (hereafter: "DCRB"), Dr Daniel Eichner, member of the DCRB, and Dr Christiane Ayotte, Director of the WADA-Accredited laboratory in Montreal provided their scientific opinion on the doping scenario. In particular, after assessing the analytical results of the 6 AAFs, including the intensity of the signal detected and the metabolites found in each case, they concluded that although it is ultimately impossible to determine whether more than one injection was received, there was no clear indication of a subsequent intake of Stanozolol following the notification of the first AAF. Dr Segura also mentioned that the most likely scenario was that all six AAFs resulted from the same intake of Stanozolol.

2.35 On 15 May 2020, FINA filed a submission in this matter along with evidence. FINA filed the following prayers:

"7.1 The Athlete is sanctioned with a eight-year period of ineligibility;

7.2 the ineligibility period imposed on the Athlete is served from the 3rd August 2019;

7.3 all results achieved by the Athlete as of 30 June 2019 are disqualified and any medals, points and prizes forfeited;

7.4 the Federación Deportiva Peruana de Natation is obliged to reimburse FINA for all costs related to the present proceedings."

III JURISDICTION

3.1 The jurisdiction of the FINA Doping Panel arises out of Articles C 22.8, C 22.9 of the FINA Constitution and Article 8.1 of the FINA DC Rules.

3.2 The Athlete did not raise any objection to the jurisdiction of the FINA Doping Panel in this case. Therefore, the FINA Doping Panel has jurisdiction on this case.

IV APPLICABLE RULES

4.1 The applicable Rules in this case are the FINA Doping Control Rules in effect since 1 January 2015.

FINA DC 2.1.1

"It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part to be demonstrated in order to establish an anti-doping violation under DC 2.1."

FINA DC 2.1.2

"Sufficient proof of an anti-doping rule violation under DC 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle."

FINA DC 9

"A violation of these Anti-Doping Rules in Individual Sports in connection with an in-Competition test automatically leads to Disqualification of the result obtained in that Event with all resulting Consequences, including forfeiture of any medals, points and prizes."

FINA DC 10.1

"An anti-doping rule violation occurring during or in connection with a Competition may, upon the decision of the ruling body of the Competition, lead to a Disqualification of all of the Athlete's individual results obtained in that Competition with all Consequences, including forfeiture of all medals, points and prizes (...)."

FINA DC 10.2

"The period of Ineligibility imposed for a violation of DC 2.1, DC 2.2 or DC 2.6 shall be as provided in DC 10.2.1 and if DC 10.2.1 does not apply then pursuant to DC 10.2.2, subject to potential reduction or suspension of sanction pursuant to DC 10.4, 10.5 or 10.6."

FINA DC 10.2.1

"The period of ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not include a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.2 The anti-doping rule violation involves a Specified Substance and FINA or the Member Federation can establish that the anti-doping rule violation was intentional."

DC 10.2.3 As used in DC 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 was a

significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Athlete can establish that the Prohibited substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

FINA DC 10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

DC 10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

DC 10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of DC 2.1, 2.2 or 2.6.

DC 10.5.1.1 Specified Substances

Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.

DC 10.5.1.2 Contaminated Products

In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

DC 10.7 Multiple Violations

DC 10.7.1 For an Athlete or other Person's second anti-doping rule violation, the period of Ineligibility shall be the greater of:

- (a) six months;*
- (b) one-half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under DC 10.6;*
- (c) two times the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking into account any reduction under DC 10.6.*

The period of Ineligibility may then be further reduced by the application of DC 10.6.

DC 10.7.2 A third anti-doping rule violation will always result in a lifetime period of Ineligibility, except if the third violation fulfills the condition for elimination or reduction of the period of Ineligibility under DC 10.4 or DC 10.5 or involves a violation of DC 2.4. In these particular cases, the period of Ineligibility shall be from eight years to lifetime Ineligibility.

DC 10.7.3 An anti-doping rule violation for which an Athlete or other Person has established No Fault or Negligence shall not be considered a violation for purposes of this Rule.

DC 10.7.4 Additional Rules for Certain Potential Multiple Violations.

DC 10.7.4.1 For purposes of imposing sanctions under DC 10.7, an anti-doping rule violation will only be considered a second violation if FINA or a Member Federation can establish that the Athlete or other Person committed the second anti-doping rule violation after the Athlete or other Person received notice pursuant to DC 7, or after FINA or a Member Federation made reasonable efforts to give notice of the first anti-doping rule violation; if FINA or a Member Federation cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction.

DC 10.7.4.2 If, after the imposition of a sanction for a first anti-doping rule violation, FINA or a Member Federation discovers facts involving an anti-doping rule violation by the Athlete or other Person which occurred prior to notification regarding the first violation, then FINA or a Member Federation shall impose an additional sanction based on the sanction that could have been imposed if the two violations had been adjudicated at the same time. Results in all Competitions dating back to the earlier anti-doping rule violation will be Disqualified as provided in DC 10.8.

DC 10.8 Disqualification of Results in Events subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic Disqualification of the results in the Event which produced the positive Sample under DC 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.

DC 10.11 Commencement of Ineligibility Period

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.

V. LEGAL DISCUSSION

5.1 The main issues for the FINA Doping Panel to decide are:

(1) Whether FINA has successfully established that the Athlete committed an ADRV within the meaning of Articles 2.1 and/or 2.2 ADR; and if so,

(2) to decide upon the appropriate consequences of such an ADRV;

1) Did FINA successfully establish that the Athlete committed an ADRV within the meaning of Articles 2.1 and/or 2.2 ADR?

Was the Athlete duly notified of the proceedings?

5.2 The Doping Panel is satisfied that the Athlete was duly notified of the proceedings as the communications addressed to him by FINA and the Doping Panel were sent to the email address he used to request the B sample analyses of Sample 1 and Sample 2 on 9 August 2019 and to acknowledge receipt of the B sample results of Sample 1 and Sample 2 on 20 October 2019. It is also the email address that the Athlete indicated in his whereabouts on ADAMS. Finally, the Doping Panel also notes that the notifications were sent to the FDPN and that according to Article 14.1.1 of the FINA DCR, FINA's notice to an Athlete or other Person who is a member of a Member Federation may be accomplished by delivery

of the notice to the Member Federation. The Athlete's right to a fair hearing was therefore respected.

The ADRV of Presence (Article 2.1 FINA DCR)

5.3 According to FINA DCR 2.1.2 and 4.4.1, unless the athlete held a valid TUE, sufficient proof of an anti-doping rule violation under FINA Rule DC 2.1, *i.e.* Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample.

5.4 In the present case, no TUE was requested nor granted to the Athlete. In addition, FINA has established the following regarding the six AAFs:

Sample 1: The analytical results of the A Sample indicated the presence of the substance Stanozolol and the analysis of the B Sample confirmed the presence of Stanozolol found in the A sample;

Sample 2: The analytical results of the A Sample indicated the presence of the substance Stanozolol and the analysis of the B Sample confirmed the presence of Stanozolol found in the A sample;

Sample 3: The analytical results of the A Sample indicated the presence of the substance Stanozolol and the Athlete waived his right to the analysis of the B Sample;

Sample 4: The analytical results of the A Sample indicated the presence of the substance Stanozolol and the Athlete waived his right to the analysis of the B Sample;

Sample 5: The analytical results of the A Sample indicated the presence of the substance Stanozolol and the Athlete waived his right to the analysis of the B Sample;

Sample 6: The analytical results of the A Sample indicated the presence of the substance Stanozolol and the Athlete waived his right to the analysis of the B Sample;

5.5 As stated above, Stanozolol is a Prohibited Substance under the Class S1 (Anabolic Agents) as stipulated in the WADA Prohibited List 2019. Stanozolol is not a Specified Substance. According to FINA DCR 4, the FINA DCR incorporate the WADA Prohibited List. According to FINA DCR 2.1.1, each athlete has the personal duty to ensure that no Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping violation for the Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.

5.6 As per Article 3.2.2 of the FINA DCR, WADA-accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by

establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the AAF.

5.7 The Athlete did not establish any departure from the International Standard for Laboratories which could reasonably have caused the AAFs.

5.8 Therefore, it is found that the Athlete committed an anti-doping rule violation under FINA DCR 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample).

The ADRV of Use (Article 2.2 FINA DCR)

5.9 The Doping Panel notes that FINA also asserted an ADRV of Use under article 2.2. FINA DCR in its letter of 18 December 2019 to the Athlete. However, in light of the fact that the Doping Panel has already held that the Athlete committed a violation of article 2.1 FINA DCR, the question of whether the Athlete also committed a violation of article 2.2 FINA DCR is of no practical consequence, since both bear the same consequences. Thus, it is considered unnecessary to address the issue of whether the Athlete also committed a violation of article 2.2 FINA DCR.

2) The Consequences of the ADRV

Should the six AAFs be considered as a single ADRV?

5.10 In order to determine the applicable period of ineligibility in this case, the Doping Panel must first determine if the AAFs are to be treated as one single ADRV or as separate ADRVs.

5.11 According to FINA DCR 10.7.4.1, for purposes of imposing sanctions under DC 10.7 (Multiple Violations), an anti-doping rule violation will only be considered a second violation if FINA, the designated organization or a Member Federation can establish that the Athlete or other Person committed the second anti-doping rule violation after the Athlete or other Person received notice pursuant to FINA DCR 7 (Results Management), or after FINA, the designated organization or a Member Federation made reasonable efforts to give notice of the first anti-doping rule violation; if FINA, the designated organization or a Member Federation cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction.

5.12 From the wording of FINA DCR 10.7.4.1, it is clear that the AAFs of Sample 1, Sample 2 and Sample 3 must be treated as a single violation since all three samples were collected before the Athlete was notified of the first AAF on 31 July 2019. However, the situation is not as clear concerning Sample 4, Sample 5 and Sample 6 which were all collected after notification of the first AAF. The FINA Doping Panel concludes that FINA did not establish that the AAFs of Samples 4, 5 and 6 constitute a further ADRV. Rather, the FINA Doping Panel concludes that all six AAFs shall be treated as a single violation.

5.13 In reaching this conclusion, the FINA Doping Panel has, in particular, considered the following:

(i) the AAFs of Samples 4, 5 and 6 are for the same prohibited substance as the AAFs of Sample 1, 2 and 3; and

(ii) after assessing the analytical results of the 6 AAFs, including the intensity of the signal detected and the metabolites found in each case Prof. Jordi Segura, Chairman of the FINA DCRB, Dr Daniel Eichner, member of the DCRB, and Dr Christiane Ayotte, Director of the WADA-

Accredited laboratory in Montreal concluded that although it is ultimately impossible to determine whether more than one injection was received, there was no clear indication of a subsequent intake of Stanozolol following the notification of the first AAF. Dr Segura also added that the most likely scenario was that all six AAFs resulted from the same intake of Stanozolol; and

(iii) it appears unlikely that an athlete who has been provisionally suspended on 3 August 2019 following two AAFs for a prohibited substance would continue to use the same prohibited substance while he is ineligible to compete in any event and remains subject to testing; and

(iv) the intention of Article 10.7.4.1 of the FINA DCR is clearly to avoid punishing an athlete twice for AAFs which arose from the same violation. Considering that the AAFs should be treated as separate ADRVs would defeat this purpose; and

(v) FINA did not assert a third anti-doping rule violation in this matter and the FINA Doping Panel has no reason to distance itself from this reasoning.

The applicable period of ineligibility and start date

5.14 The starting point of the period of ineligibility is Article 10.2. FINA DCR that specifically refers to an ADRV according to Article 2.1 FINA DCR. Since the ADRV committed by the Athlete (Presence of Stanozolol) does not involve a Specified Substance, Article 10.2.1.1 FINA DCR applies, which states as follows:

“10.2.1. The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or the person can establish that the anti-doping rule violation was not intentional.”

5.15 The rules further consider that the term “*intentional*” identifies 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 was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk (FINA DCR 10.2.3).

In the present case, there is no evidence on file that the violation was not intentional. The onus of proof in this regard is on the Athlete. The FINA Doping Panel provided the Athlete with numerous opportunities to use his right to a fair trial and to establish or explain the presence of the AAFs concerning his samples. He used none of these occasions to provide an explanation to the FINA Doping Panel. Since the Athlete is unable to discharge his burden of proof, the FINA Doping Panel need not enter into an examination whether or not fault-related reductions (Articles 10.4 or 10.5 FINA DCR) apply. In addition, no submissions have been made with respect to non-fault-related reductions according to Article 10.6 FINA DCR. Thus, the FINA Doping Panel finds that a period of Ineligibility of four years should have been imposed on the Athlete if it was his first ADRV.

5.16 As mentioned above, the Athlete had committed a first ADRV on 12 July 2015. The decision of the Doping Panel to impose on him a four-year ban commencing on 12 July 2015 was finally and definitively upheld by the CAS.

5.17 The present case equates thus to a second ADRV of the Athlete, in the meaning of FINA Rules DC 10.7.1 and 10.7.4.1. In fact, this second ADRV has been committed by the Athlete approximately four years after he had received notice of his first ADRV.

5.18 According to FINA DCR 10.7.1, for an Athlete or other Person's second ADRV, the period of ineligibility shall be the greater of:

- (a) six months;
- (b) one-half of the period of ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under DC 10.6;
- (c) two times the period of ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking into account any reduction under DC 10.6.

5.19 As per FINA DCR 10.7.1 (c), the period of ineligibility applicable in this case thus equates to an eight-year period of ineligibility i.e. two times the period of ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation.

Commencement of the period of ineligibility

5.20 The FINA Doping Panel has to determine the commencement of the period of Ineligibility. Article 10.11 FINA DCR provides in this respect as follows:

“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. [...]”

5.21 It is undisputed between the Parties that the Athlete was provisionally suspended since 3 August 2019 and that he respected and observed the Provisional Suspension imposed on him. Therefore, the Athlete shall receive a credit for the period of the Provision Suspension pursuant to Article 10.11.3. FINA DCR:

“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. [...]"

5.22 Consequently, the period of Ineligibility shall commence on the date of the decision of the FINA Doping Panel. However, the Athlete shall be credited for the time served under the Provisional Suspension, i.e. as from 3 August 2019 to the date of the issuance of the decision.

Disqualification

5.23 According to FINA DCR 10.8 all competitive results obtained from the date a positive sample was collected 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.

5.24 In the present case, there are no circumstances which would warrant application of the fairness exception. Therefore, all competitive results of the Athlete obtained from the date of collection of Sample 1 i.e. 30 June 2019, through the commencement of his provisional suspension, i.e. 3 August 2019, shall be disqualified with all resulting consequences including forfeiture of any medals, points and prizes.

Costs of the proceedings

5.25 Pursuant to Article 12.3 of the FINA DCR, Member Federations shall be obliged to reimburse FINA for all costs (including but not limited to laboratory fees, interpretation and hearing expenses and travel)

related to an ADRV committed by a Person affiliated with that Member Federation.

5.26 In the present case, the FINA Doping Panel understands these costs to be the laboratory fees for the analyses of the A and B samples and the costs of the Documentation Packages for all samples, at the exception of the costs of the analyses of Sample 3 which were not paid by FINA. As the Athlete was affiliated with the FDPN at the time of the ADRV, the FDPN shall reimburse these costs.

VI RULING

6.1 In the light of the above, the FINA Doping Panel decides as follows:

- Mr. Mauricio Fiol-Villanueva is sanctioned with an (8) eight-year period of ineligibility;
- The period of ineligibility shall commence on the date of the decision of the FINA Doping Panel. However, the Athlete shall be credited for the time served under the Provisional Suspension, i.e. as from 3 August 2019 to the date of the issuance of the decision;
- All results achieved by Mr. Mauricio Fiol-Villanueva as of 30 June 2019 are disqualified and any medals, points and prizes forfeited
- The Federación Deportiva Peruana de Natation is obliged to reimburse FINA for the costs of the analyses of the A and B samples of Samples 1, 2, 4, 5 and 6 and the costs of the Documentation Packages for all six samples.
- All other and/or further-reaching requests are dismissed.

6.2 This decision may be appealed to the Court of Arbitration for Sport (CAS), pursuant to Article 13.2 of the FINA DCR. The time limit to file the appeal is governed by the provisions in Article 13.7 FINA DCR.

6.3 This decision will be notified to Mr. Mauricio Fiol-Villanueva, WADA, the FDPN and the National Anti-Doping organization of Peru.

Lausanne, 19 August 2020

Robert Fox
Chairman

Toshiro Ueyanagi,
Member

Peter Kerr
Member

Signed on behalf of all three Panel Members

A handwritten signature in black ink, appearing to be 'R. Fox', written over a horizontal line.

Robert Fox