SR/322/2024

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF WORLD ATHLETICS

Before:

Christopher Quinlan KC (Chair)

Julien Berenger

Harveen Thauli

BETWEEN:

WORLD ATHLETICS **Anti-Doping Organisation**

and

MR NORBERT KOBIELSKI **Athlete**

DECISION OF THE DISCIPLINARY AND APPEALS TRIBUNAL

I. INTRODUCTION

1. World Athletics ("**WA**") is the governing body for the sport of athletics worldwide. WA has delegated implementation of its anti-doping rules to the Athletics Integrity Unit (the "**AIU**")

as per Rule 1.2.2 of the Anti-Doping Rules ("**ADR**"). Mr Tony Jackson, Deputy Head of Case Management of the AIU, acted as counsel for the AIU in these proceedings.

2. The Respondent, Mr Norbert Kobielski ("**the Athlete**" or "**Mr Kobielski**"), is a 27-year-old high-jumper from Poland. Mr Kobielski is an International-Level Athlete and obtained the Olympic qualification at the Diamond League Finals in Eugen on 18 September 2023. Mr Kobielski was represented by Mr Łukasz Klimczyk, Attorney-at-Law from Poland.

3. The Appellant and the Athlete are each referred to individually as a "Party" and collectively as the "Parties".

4. By Notice of Charge dated 28 August 2024, the Athlete was charged by the AIU with an Anti-Doping Rule Violation ("**ADRV**") contrary to Rule 3.1 ADR based on an Adverse Analytical Finding ("**AAF**") for the presence of a Prohibited Substance namely Pentedrone norephedrine metabolite in a urine sample collected from him on 26 May 2024 ("the **Charge**"). The Athlete denied the Charge.

5. The Disciplinary Tribunal ("the **Tribunal**") was convened pursuant to Rule 8.5 ADR. The hearing of this matter was scheduled to take place by Zoom video conference call on 28 April 2025. At the Athlete's request, the hearing was vacated and the matter determined on the papers.

6. This document constitutes the Tribunal's reasoned and unanimous Decision, in accordance with Rule 8.12 ADR. It is necessarily a summary. It is reached after appropriate consideration of all the evidence, submissions and other materials placed before us. Nothing is to be read into the absence of specific reference to any aspect of the material or submissions. The Tribunal considered and gave appropriate weight to it all.

II. JURISDICTION

7. The applicable rules are the 2024 ADR in force from 1 January 2024.

8. Rule 1.4.2 ADR provides:

"*1.4.2 Without limitation to the above, these Anti-Doping Rules shall apply to:*

[…]

(f) the following Athletes, Athlete Support Personnel and other Persons:

(i) all Athletes who have signed an agreement with World Athletics or have been accredited or granted an official status by World Athletics/the Integrity Unit (for example, by way of inclusion in the International Registered Testing Pool or by designation of a Platinum, Gold, Silver or Bronze Label status) and all Athlete Support Personnel who have been accredited or granted an official status by World Athletics (for example, by way of an identity card) or who participate in International Competitions organised or sanctioned by World Athletics;

(ii) all Athletes, Athlete Support Personnel and other Persons who are members of or authorised by any Member Federation, or any member or affiliate organisation of any Member Federation (including any clubs, teams, associations or leagues);

(iii) all Athletes, Athlete Support Personnel and other Persons preparing for or participating in such capacity in Competitions and/or other activities organised, convened, authorised, sanctioned or recognised by (i) World Athletics (ii) any Member Federation or any member or affiliate organisation of any Member Federation (including any clubs, teams, associations or leagues), or (iii) any Area Association, wherever held, and all Athlete Support Personnel supporting o associated with such Athletes' preparation or participation […]".

World Athletics has established a Disciplinary and Appeals Tribunal to hear alleged ADRVs and other breaches of the ADR (Rules 1.3 and 8.2 ADR).

9. This matter has been referred to the Disciplinary and Appeals Tribunal in accordance with Rule 8.5.5 ADR.

10. WA has, pursuant to Rule 4.1 of the WA Disciplinary and Appeals Tribunal Rules, determined that the Disciplinary and Appeals Tribunal shall have a Secretariat which is independent of WA. Sport Resolutions acts as Secretariat to the Disciplinary and Appeals Tribunal.

11. The Sample was collected from the Athlete In-Competition at the 'Opolski Festiwal Skoków' in Opole, Poland**.** That is a WA Continental Tour Bronze competition and is authorised and recognised by WA. The Athlete is therefore subject to the ADR by application of Rule 1.4.2(f)(iii). In any event, jurisdiction was not in issue.

III. FACTUAL BACKGROUND

12. On 26 May 2024, the Athlete provided a urine Sample In-Competition at the Opolski Festiwal Skoków' in Opole, Poland, which was given code 1231568 (the "**Sample**").

13. On 28 June 2024, the World Anti-Doping Agency ("**WADA**") accredited laboratory in Warsaw, Poland (the "**Laboratory**") reported that analysis of the Sample had revealed the presence of Pentedrone norephedrine metabolite, the AAF. The AIU reviewed the AAF in accordance with Article 5 of the International Standard for Results Management ("**ISRM**"). The Athlete did not have a Therapeutic Use Exemption ("**TUE**") for Pentedrone norephedrine metabolite. Further, the AIU concluded that there had been no apparent departure from the International Standard for Testing and Investigations ("**ISTI**") or from the International Standard for Laboratories ("**ISL**").

14. On 3 July 2024, the AIU issued the Athlete with a Notice of Allegation of an ADRV and invited him, *inter alia*, to provide his detailed written explanation for the AAF by no later than 10 July 2024.

15. On 6 July 2024, the Athlete replied through his appointed legal representative and requested:

    15.1 Information regarding the concentration of the Prohibited Substance detected in the Sample; and

15.2 Information regarding the results of tests conducted before and after 26 May 2024.

16. On 8 July 2024, the AIU responded to the Athlete's requests and provided him with:

16.1 The estimated concentration of Pentedrone norephedrine metabolite in the Sample (513 ng/ml); and

16.2 His Testing history since 1 January 2024.

17. On 11 July 2024, the Athlete requested a copy of the A Sample Laboratory Documentation Package and confirmed his request for the B Sample analysis. The Athlete also filed a written submission in the context of a Provisional Hearing setting out why a Provisional Suspension should not be imposed upon him.

18. On 15 July 2024, the Athlete wrote to the AIU and expressly withdrew his request for the B Sample analysis.

19. On 17 July 2024, the AIU provided the Athlete with the A Sample Laboratory Documentation Package.

20. On 23 July 2024, the AIU imposed a Provisional Suspension upon the Athlete with immediate effect.

21. Following a request made by the Athlete on 24 July 2024, the AIU provided him with, *inter alia*:

21.1 Correspondence between the Laboratory and WADA in relation to the AAF; and

21.2 A copy of the expert report dated 18 July 2024 from Professor Martial Saugy ("**Professor Saugy's July report**").

22. On 2 August 2024, following a further request from the Athlete, the B Sample was analysed by the Laboratory in his presence. The B Sample analysis confirmed the AAF.

23. On 2 August 2024, the Court of Arbitration for Sport ("**CAS**") heard the Athlete's appeal against his Provisional Suspension.

24. On 4 August 2024, the CAS issued an Operative Award dismissing his appeal.

25. On 28 August 2024, the AIU issued the Charge. On 20 September 2024, the Athlete responded to the Charge, denying he had committed an ADRV and requested a hearing in this matter.

IV. PROCEDURE BEFORE THE DISCIPLINARY AND APPEALS TRIBUNAL

1) History

26. On 20 September 2024, the matter was referred to the Disciplinary and Appeals Tribunal (the "**Tribunal**").

27. On 25 October 2024, Mr Christopher Quinlan KC was appointed as Chairman of these proceedings. No objections were received to his appointment upon disclosure of his Declaration of Independence.

28. On 14 November 2024, following an agreement between the parties as to the timings when written submissions would be exchanged, Procedural Directions were issued for the determination of this matter (the "**Directions**"). Tentative dates for the hearing were set, and the hearing was scheduled for 24 February 2025 by video conference call.

29. On 29 November 2024, the AIU filed its Brief (on behalf of WA) in this matter.

30. On 10 December 2024, Julien Berenger and Harveen Thauli were selected by the Chair of the Disciplinary and Appeals Tribunal, Charles Hollander KC, for appointment as Wing members to this Tribunal pursuant to Rule 8.7. 1 ADR.

31. The Athlete did not file his Answer Brief on 10 January 2025 as required by the Directions.

32. On 14 January 2025, the Secretariat informed the Tribunal that on 9 January 2025, Mr Klimczyk had emailed in these terms:

> "*I would like to inform you that I have been trying to contact my Client for 2 months without success (he is not responding to my calls and emails).*

In view of impossibility of contacting him and effective possibility of representing Mr. Kobielski in this matter, we have been forced to terminate the power of attorney (effective as of the New Year). This means that we are currently not authorized to represent him and will not act in his case (this is objectively impossible due to lack of contact with the Client).

However, taking into account fact that we always try to look after interests of our Clients, we will one more time try to contact Mr. Kobielski and inform him about necessity of self-representation or appointment of another lawyer."

33. On the following day, the Tribunal Chair issued these further directions:

"*1. The Athlete must – by 17.00 (GMT) 15 January 2025 - answer the following:*

Whether he now represents himself or is represented by other lawyers.

If he is now represented by other lawyers, he must inform Sport Resolutions of the identity of the said lawyers.

When he will submit his Answer Brief.

2. The Athlete should be informed that the present hearing date remains fixed. He should also be told that should he not cooperate with these proceedings nor provide any reasonable explanation for his failure to do so, the hearing may proceed in his absence."

34. The Secretariat issued those directions the following day. Therefore, the Tribunal Chair extended time for the Athlete to reply until 17.00 (GMT) on 16 January 2025. No reply was received.

35. Between 22 January 2025 and 5 February 2025, the Secretariat was in WhatsApp correspondence directly with the Athlete. The message sent on 5 February 2025 informed him, in accordance with the Tribunal Chair's direction that

"*If he does not engage in this process then the matter may be decided in his absence and without any evidence he wishes to present, which cannot be in his best interests".*

36. Further, on 6 February 2025, the Secretariat emailed the Athlete's International Federation, Polski Związek Lekkiej Atletyki, explaining his non-engagement in the process and stating (in clear terms) that the hearing remained fixed for 24 February 2025 and:

"*If the Athlete does not reply and provide an explanation for not being reachable by his counsel and not following the Directions, the hearing will proceed without him and the Chair highlighted that this cannot be in his best interest* [sic]."

37. On 7 February 2025, Mr Klimczyk requested time to speak with the Athlete, which the Tribunal Chair granted. On 14 February 2025, Mr Klimczyk informed the Tribunal Chair that he was representing the Athlete and requested new directions for the provision of the Answer Brief. In light thereof, on 24 February 2025 the Tribunal Chair conducted a further direction hearing and directed, *inter alia*, service of the Answer Brief by 17 March 2025. The substantive hearing of this matter was fixed for two days, namely 28 and 29 April 2025.

38. The Answer Brief and a Reply brief from the AIU were filed in accordance with those directions.

39. It is necessary to explain this protracted process to put into context further developments in the week before 28 April 2025.

40. On 22 April 2025, the Secretariat informed the Tribunal that on 18 April. Mr Klimczyk had emailed informing:

"I have not had any contact with the Athlete for quite some time now (after submitting our written submission), and he has not responded to my recent messages / emails."

Thereafter, the Secretariat tried to contact the Athlete directly.

41. On 24 April, Mr Klimczyk requested:

"*Due to the lack of communication and the resulting inability to ensure participation of the individuals involved on our side in the hearing, I hereby submit a request for the case to be adjudicated on the basis of the written submissions and evidence already gathered in the proceedings.*

Without any contact with Mr. Kobielski - including the lack of arrangements for covering the costs of the interpreter and the expert - we are unable to guarantee their participation in the hearing. Furthermore, I'm not in a position to effectively represent Mr. Kobielski without his involvement, or at the very least, his communication.

Consequently, considering that written submissions have already been filed in this matter, and in order not to delay the ongoing proceedings, I believe the request for the case to be decided on the basis of the written submission is justified."

42. On 25 April 2025, the Tribunal Chair ruled:

"*We were told that the secretariat was trying to contact the Athlete. We infer that it has been unsuccessful.*

Having considered the application two things are apparent:

1. For the reasons explained, it is not made on the Athlete's instructions.

2. There is no indication from him that he will not attend the hearing on Monday.

Therefore, the only appropriate course is for this matter to remain as fixed for an oral hearing on 28/4/25 at 13.00 (BST)."

43. Later that same day, Mr Klimczyk replied:

"*I would like to note that Mr. Kobielski had previously been informed by me that, should the situation involving a lack of communication on his part occur again, the matter could be decided based on the written submissions or in his absence. He acknowledged and accepted this information.*

In my assessment - given the complete absence of any contact from the Athlete - it is highly unlikely that he will attend the hearing.

I kindly ask that this information be conveyed to the Chair for consideration."

44. The Tribunal Chair sent a reply to the Secretariat for the parties the same afternoon informing them that the further information did not change his decision.

45. On the morning of 28 April, the Tribunal received this application from Mr Klimczyk:

"*I would like to inform you that this morning Mr. Kobielski contacted me and explained that, due to personal and health-related reasons, he was unable to communicate regarding the case earlier.*

He also confirmed his agreement with the previously submitted request to have the case adjudicated based on the written submissions (please see his confirmation below)."

46. That was accompanied by an email from the Athlete in these terms:

"*In reference to my representative's request, I hereby agree to have my case heard based on the written submissions, without the need for an oral hearing.*

Unfortunately, due to challenging personal and health-related circumstances, I was unable to contact you earlier. I sincerely apologise for the situation and hope for your understanding."

47. No detail of the "*challenging personal and health-related circumstances*" was or has been provided to the Tribunal.

48. The application for the matter to be decided without an oral hearing was not opposed by the AIU. Given the time zones, the Tribunal could not consider that application until very shortly before the scheduled start time for the hearing. Having done so, the Tribunal granted the application.

2) <u>WA's Case</u>

49. The AIU submitted that this was a straightforward case. The Laboratory issued an AAF for the presence of Pentedrone norephedrine metabolite in the Athlete's A and B Samples. The estimated concentration of Pentedrone norephedrine metabolite in the A Sample was 513 ng/mL.

50. Pentedrone norephedrine metabolite is a Metabolite of Pentedrone. Pentedrone is a Cathinone analogue. According to Section S6.B: SPECIFIED STIMULANTS of the WADA 2024 Prohibited List "*Cathinone and its analogues e.g. mephedrone, methedrone, and α-pyrrolidinovalerophenone*" ("**α-PVP**") […] "*and other substances with a similar chemical structure or similar biological effect*" are Prohibited Substances prohibited In Competition.

51. The Athlete did not hold a valid TUE to justify the presence of Pentedrone norephedrine metabolite in the Sample. Furthermore, there were no apparent departures from the ISTI or

the ISL. In those circumstances, it submitted that the AAF is sufficient proof of the commission of an ADRV contrary to Rule 2.1 ADR.

52. Further, for reasons it explained, the AIU invited the Tribunal to reject the Athlete's arguments and upon doing so, should be comfortably satisfied that he has committed an ADRV pursuant to Rule 2.1 ADR.

*3) **Athlete's Case***

53. The Athlete denied the ADRV. His case was set out in detail in his Answer Brief. In Mr Klimczyk's written submissions, he repeated the Athlete's denial that he has *"never consciously (intentionally) used any prohibited substance (including the one detected in his body)*" [1]. Mr Klimczyk argued that the Athlete should not be found to have a committed an ADRV because:

53.1. The substance detected by the laboratory, Pentendrone norephedrine metabolite does not exist and what was detected was 1-phenyl-1-hydroxy-2-aminopentane.

53.2. 1-phenyl-1-hydroxy-2-aminopentane is structurally similar to norephedrine, a cathine diastereoisomer (nor pseudoephedrine) and in the absence of the detection of the parent compound (pentedrone), it cannot be unequivocally concluded that the presence of 1-phenyl-1-hydroxy-2-aminopentane in the Sample was due to his alleged use of pentendrone.

53.3. The presence of 1-phenyl-1-hydroxy-2-aminopentane in the Sample may be related to his ingestion of any N-alkyl derivative of this substance, which is not prohibited.

53.4. 1-phenyl-1-hydroxy-2-aminopentane is structurally similar to cathine but not to cathinone substances and therefore the decision limit specified for cathine does not apply, which has not been exceeded in this case.

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[1] §40.

54. Paragraph 101 of the written submissions asserted that Ms Dorota Kwiatkowska, Ms Tiia Kuuranne and Mr Ede Rukovszky were to be called by the Athlete. No statements were received from any of them and the assertion that they were to be "called" was overtaken by the request for this to be determined without an oral hearing.

55. The Athlete did not provide a statement. The assertion in paragraph 103 of the written submissions that he may make an oral statement at the hearing was again overtaken by the request for this to be determined without an oral hearing.

56. The Athlete relied upon a two-page expert report from Dr Andrzej Kwaśnica, dated 17 March 2025 ("**Dr Kwaśnica's March report**"). Therein he asserts, *inter alia*:

> "*It has not been established that the metabolite detected is the result of the metabolism of Norepseudoephedrine, but that it may be the result of the metabolism of a derivative of Norepseudoephedrine, i.e. the N-alkyl derivative 1-phenyl, 1-hydroxy, 2-amino pentane […] There is no doubt that the 1-phenyl-1-hydroxy-2-amino pentane detected in the athlete's urine can be a metabolite of Pentedrone, but it cannot be agreed that the presence of this substance in the athlete's urine can be clearly linked to the fact that he took Pentedrone. As demonstrated in the L4T 706/24 opinion, the presence of this substance in an Athlete's urine may also be result of the use of a substance that is not prohibited under WADA regulations or prohibited above decision limit. Such a link would be indisputable if Pentedrone and/or any other Pentendrone's metabolite had been detected in the Athlete's urine, which was not the result of this analysis.*
>
> *[…]*
>
> *It should be emphasized here that the above-mentioned substance (and its N-alkyl derivatives) can certainly not be considered a Cathinone derivative due to significant differences in the structure of the molecule (Cathinone is a ketone, while Cathine is an alcohol). Furthermore, it should be emphasized that at this point we no longer treat 1-phenyl-1-hydroxy-2-aminopentane as a metabolite of the prohibited substance (Pentendrone), but as a derivative of the prohibited substance from group S.6, which requires the WA to demonstrate more precisely which substance it is a derivative of.*"

57. L4T-706/24 is a reference to Dr Kwaśnica's report dated 26 July 2024 ("**Dr Kwaśnica's July report**)[2] which was relied upon by the Athlete in his application to the CAS to have the Provisional Suspension lifted. Therein he concluded, *inter alia*:

> "*1) There is reasonable doubt as to what substance was detected in the Athlete's urine sample. This is because there is no substance known as "pentedrone norephdrine metabolite".*
>
> *2) Assuming that the substance detected in the Athlete's urine is 1-phenyl-1-hydroxy-2-aminopentane hydrochloride (CAS 64037-35-0), it must be noted that in view of the absence of pentedrone, it cannot be unequivocally concluded that it was the ingestion of this prohibited substance that 1-phenyl-1-hydroxy-2-aminopentane hydrochloride originated from. This is because the presence of 1-phenyl-1-hydroxy-2-aminopentane in the Athlete's urine sample may be attributable to his ingestion of any N-alkyl derivative of this substance. N-alkyl derivatives of 1-phenyl-1-hydroxy-2-aminopentane are not classified as prohibited substances by WADA. Due to this, the result of the analysis should not have been qualified as an Adverse Analytical Finding*."

58. In paragraphs 99 and 100 of the Answer Brief, the Athlete requested:

> "*99. The Athlete kindly request that the Disciplinary Tribunal bind the WA and/or Laboratory to provide the following evidence: all SOP documents applicable to the Sample (from the content of documents provided to the Athlete, it appears that, inter alia, following were applied: SOP_8, SOP_35, SOP_18, SOP_31, SOP_38, SOP_15 and SOP_43).*
>
> *100. The Athlete kindly request that the Disciplinary Tribunal bind the WA and/or Laboratory to provide the following evidence: all email correspondence between Laboratory and laboratories from Genk and London concerning the Athlete's sample*."

59. All relevant information to assess further finding is included in the Laboratory Documentation Package. That was provided to him on 17 July 2024. A laboratory is not required to provide any additional documentation such as standard operating procedures. The Athlete did not explain why such materials would be relevant to his case. In any event, (1) this application

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[2] Hearing Bundle, p. 1747.

was not pursued, and (2) the Tribunal was expressly requested by the Athlete to decide the case on the available papers.

V. ANTI-DOPING RULE VIOLATION

60. A full list of the materials provided to the Tribunal can be found in Appendix A. The Tribunal considered and gave appropriate weight to it all.

61. Rule 2.1 ADR provides:

> "*2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.*
>
> *2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters their 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 to demonstrate intent, Fault, Negligence or knowing Use on the Athlete's part in order to establish a Rule 2.1 anti-doping rule violation.*
>
> *2.1.2 Sufficient proof of an anti-doping rule violation under Rule 2.1 is established by any of the following: (i) the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waive analysis of the B Sample and the B Sample is not analysed; (ii) where 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; or (iii) where the Athlete's A or B Sample is split into two parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample.*
>
> *2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the*

presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample will constitute an anti-doping rule violation.

2.1.4 As an exception to the general rule of Rule 2.1, the Prohibited List, International Standards or Technical Documents may establish special criteria for reporting or the evaluation of certain Prohibited Substances."

62. Rule 3.1 ADR provides that WA has the burden of establishing that an ADRV has been committed to the comfortable satisfaction of the Tribunal.

63. Rule 3.2.3 ADR provides that "*WADA-accredited laboratories and other laboratories approved by WADA are presumed to have conducted sample analysis and custodial procedures in accordance with the ISL*". That is subject to the Athlete rebutting that presumption by demonstrating, on the balance of probability, that a departure from the ISL occurred that could reasonably have caused the AAF. Professor Saugy detected no such departures. Indeed, there is no evidence of any departures from the ISTI or the ISL, let alone any that could reasonably have caused the AAF.

64. The key issue in this case is the determination of the nature and source of the substance detected in the Sample. The Tribunal's findings on this issue, based on its analysis of the available evidence, are as follows.

65. The starting point is the Laboratory which on 28 June 2024 issued an AAF report for the presence of Pentedrone norephedrine metabolite in the Athlete's A Sample. The estimated concentration of Pentedrone norephedrine metabolite in the Sample was 513 ng/mL[3]. Analysis of the B Sample confirmed that result. The said report further states that:

[3] Ibid, p146.

65.1 Pentedrone norephedrine metabolite as the metabolite of pentedrone and α-PVP is included in the group S6.B specified stimulants and is prohibited in sport In Competition.

65.2 Pentedrone norephedrine metabolite is the main metabolite for both Pentedrone and α-PVP. They are considered a cathinone analogue.

66. According to Section 6.B: SPECIFIED STIMULANTS of the WADA 2024 Prohibited List: "*Cathinone and its analogues e.g. mephedrone, methedrone, and [α-PVP]*" and "*other substances with a similar chemical structure or similar biological effect*" are Prohibited Substances prohibited In Competition.

67. In Professor Saugy's July report, he opines:

67.1. The Pentedrone norephedrine metabolite is the main metabolite for both Pentedrone and α-PVP.

67.2. Pentedrone and α-PVP are considered as cathinone analogues.

67.3. That is clearly an AAF for the detection of a metabolite of a Prohibited Substance described in the section 6.B of the WADA 2024 prohibited list[4].

68. Further, Professor Saugy's second report dated 1 August 2024[5] ("**Professor Saugy's August report**") confirms that Pentedrone norephedrine metabolite is a metabolite of Pentedrone and/or α-PVP in accordance with established scientific literature.

69. That is supported by a second independent expert, namely Professor Olivier Rabin, WADA Senior Director, Science and Medicine. In an email he sent on 1 August 2024, he agrees with the contents of Professor Saugy's report. He adds that in his own expert opinion, "*The AAF was properly reported by the Laboratory*"[6]

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[4] Ibid, p1450.
[5] Ibid, p1927.
[6] Ibid, p1932.

70. To what extent, if at all, is this evidence undermined by the expert report relied upon by the Athlete? It is submitted by the Athlete that Pentedrone norephedrine metabolite does not exist. In his August report, Professor Saugy states that Pentedrone norephedrine metabolite is a commercial or laboratory name for a chemical compound, namely 1-phenyl-1-hydroxy-2-aminopentane[7]. That is not disputed by Dr Kwaśnica who in his own July report states:

> *"Under "pentedrone norephdrine [sic] metabolite", we can find, e.g., a certified reference material manufactured by Cerilliant (according to the manufacturer, the material is not currently available for sale), which contains 1-phenyl-1-hydroxy-2-aminopentane hydrochloride, CAS number 64037-35-0[8]*."

71. He further states that he "*assumes*" that the Laboratory detected 1-phenyl-1-hydroxy-2-aminopentane in the Sample[9]. However, there is no evidence to suggest that it was not. There is therefore nothing in this point.

72. Second, it is argued by the Athlete that 1-phenyl-1-hydroxy-2-aminopentane is structurally similar to norephedrine, a cathine diastereoisomer (nor pseudoephedrine) and in the absence of the detection of the parent compound (Pentedrone), it cannot be unequivocally concluded that the presence of 1-phenyl-1-hydroxy-2-aminopentane in the Sample was due to his alleged use of Pentendrone. Once more, the Tribunal rejects that argument for two reasons:

    72.1 The point is addressed in Professor Saugy's August report. Therein he states that 1-phenyl-1-hydroxy-2-aminopentane is composed of 11 atoms of carbon together with 1 of oxygen and 1 of nitrogen (+ 17 nitrogen). Norephedrine has only 9 atoms of carbon together with 1 of oxygen and 1 of nitrogen (+13 nitrogen). Therefore, norephedrine, which has only 9 atoms of carbon, cannot metabolise into 1-phenyl-1-hydroxy-2-aminoheptane, which has 11 carbon atoms. In other words, 1-phenyl-1-hydroxy-2-

[7] Ibid, p1927.
[8] Ibid, p. 1748.
[9] Ibid, p. 1749.

aminoheptane simply cannot be a metabolite of norephedrine[10]. The Tribunal accepts this compelling explanation.

72.2 Further, the absence of the parent compound Pentedrone in the Sample does not mean *ipso facto* that it cannot be established that the AAF was caused by the Athlete's ingestion thereof. In Professor Saugy's August report, he observes that it is common in the anti-doping cases for a parent compound not to be detected in a Sample[11]. The presence of a metabolite alone is sufficient to unequivocally establish an ADRV contrary to Rule 2.1.2 ADR.

73. The Athlete further argues that -phenyl-1-hydroxy-2-aminopentane detected in the Sample could have been the result of his ingestion of another N-alkyl derivative, which is/are not prohibited. The Tribunal rejects that argument for the following reasons:

73.1 First, it is wholly speculative.

73.2 Secondly, Section 6.B of the WADA 2024 Prohibited List expressly includes, but is not limited to, the substances which are listed, and "*other substances with a similar chemical structure or similar biological effect(s)*". In Professor Saugy's August report, he states that any N-alkyl derivative of 1-phenyl-1-hydroxy-2-aminopentane (Pentedrone norephedrine metabolite) would be a substance with similar chemical structure or similar biological effect(s) to 1-phenyl-1-hydroxy-2-aminopentane and would therefore be prohibited under the WADA 2024 Prohibited List[12]. That is supported by Professor Rabin, who has stated that "*there is no basis for the contention that [the AAF] resulted from the ingestion of a non-prohibited substance*.[13]"

73.3 In any event, as also noted by Professor Saugy in his August report, 1-phenyl-1-hydroxy-2-aminoheptane (Pentedrone norephedrine metabolite) has been described as a metabolite of cathinone analogues such as Pentedrone and/or α-PVP. If the

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[10] Ibid, pp1927-1928.
[11] Ibid, pp1928-1930.
[12] Ibid, p. 1929.
[13] Ibid, p. 1932.

source of this AAF was not Pentedrone or α-PVP, it is extremely likely that the source must be another cathinone analogue prohibited under the WADA 2024 Prohibited List.

74. Further still, there is no basis for the assertion that since 1-phenyl-1-hydroxy-2-aminopentane is structurally similar to cathine but not to cathinone substances, the decision limit specified for cathine should be applied to it. It is not cathine and there is no concentration stipulation for Pentedrone norephedrine metabolite in the WADA 2024 Prohibited List or otherwise.

75. The Tribunal can deal with the other arguments advanced on the Athlete's behalf necessarily briefly. The Tribunal is satisfied that the Laboratory did not have "*great doubts*" about reporting the AAF. In any event, it is a matter for the Tribunal to resolve whether it is comfortably satisfied that the substance detected was Prohibited. Further, the fact that the Competition & Anti-Doping Coordinator of European Athletics may have wrongly reported that all samples taken on 26 May 2024 were negative is irrelevant.

76. Therefore, the Tribunal is comfortably satisfied that the substance found in the Athlete's Sample was Pentedrone norephedrine metabolite (1-phenyl-1-hydroxy-2-aminopentane). That is a Metabolite of Pentedrone and α-PVP, which are cathinone analogues (included in section 6.B SPECIFIED STIMULANTS of the WADA 2024 Prohibited List). It is a Specified Substance prohibited in competition. It follows that the Tribunal is comfortably satisfied that the ADRV is proved.

VI. CONSEQUENCES

77. Rule 10.2 ADR provides the sanction to be imposed for ADRVs under Rule 2.1 as follows:

"*Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method.*

The period of Ineligibility for a violation of Rule 2.1, Rule 2.2 or Rule 2.6 will be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 and/or 10.7:

10.2.1 Save when Rule 10.2.4 applies, the period of Ineligibility will be four years where:

(a) *The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional* [...]".

78. Pentedrone norephedrine metabolite (1-phenyl-1-hydroxy-2-aminopentane) is a Specified Substance and so the period of Ineligibility shall therefore be two (2) years unless the AIU can establish that the ADRV was intentional. The AIU did not contend that the ADRV was intentional.

79. The Athlete did not provide any explanation for the ADRV and did not seek a reduction of the otherwise appropriate period of Ineligibility based upon the *No Fault* or *No Significant Fault* or *Negligence provisions.*

80. Therefore, the Tribunal imposes a period of Ineligibility of two (2) years.

81. Pursuant to Rule 10.13.2 ADR, an athlete will receive credit for the period of any Provisional Suspension served provided it has been respected. The AIU has not suggested that the Athlete has not respected Provisional Suspension in accordance with Rule 10.13.2(a) ADR. Therefore, the period of Ineligibility of two (2) years will commence on 23 July 2024, the date the Provisional Suspension was imposed.

82. Pursuant to Rules 9 and 10.1 ADR, the Athlete's individual results obtained at the 2024 'Opolski Festiwal Skoków' shall be Disqualified, "*with all resulting consequences, including forfeiture of any medals, titles, awards, points and prize and appearance money*".

83. Further, pursuant to Rule 10.10 ADR, the Athlete's competitive results obtained since 26 May 2024 (the date the Sample was collected) to 23 July 2024 (the date upon which the Provisional Suspension commenced) shall also be Disqualified, "*with all the resulting Consequences, including forfeiture of any medals, titles, points, prize money, and prizes*".

84. The AIU seeks "*a contribution towards its legal and other costs (including the costs of the proceedings before the Disciplinary Tribunal)*" pursuant to Rule 10.12.1 ADR[14]. The Athlete

[14] AIU Brief, §80.6.

asserts, "*Due to his financial situation, shall not to be ordered to bear any costs of these proceedings*"[15]. No details were provided to support this claim of impecuniosity. The Tribunal directs:

84.1. Within seven (7) days of the date hereof, the AIU must particularise the costs it seeks.

84.2. Within fourteen (14) days thereof, the Athlete must provide such details of his financial circumstances he wishes the Tribunal to consider in relation to this issue.

85. Thereafter, the Tribunal will decide the issue of costs pursuant to 8.9.1(j) ADR.

VII. RIGHT OF APPEAL

86. This decision may be appealed to the Court of Arbitration for Sport ("CAS"), located at Château de Béthusy, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland (procedures@tas-cas.org), in accordance with Rules 13.2.1 and 13.2.3 ADR.

87. In accordance with Rule 13.6.1 ADR, the parties shall have thirty (30) days from receipt of this decision to lodge an appeal with the CAS.

VIII. SUMMARY

88. For the reasons set out, The Tribunal:

88.1. Finds the ADRVs contrary to Rules 2.1 ADR proved.

88.2. Imposes a period of Ineligibility of two (2) years, which commences on 23 July 2024.

88.3. Orders the Athlete's individual results obtained at the 2024 'Opolski Festiwal Skoków' and since that date to be Disqualified, with all resulting consequences

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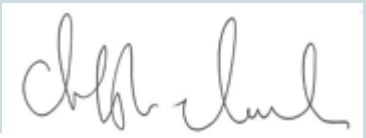
[15] Answer Brief, §109(2).

including forfeiture of any medals, titles, awards, points and prize and appearance money.

89. The Tribunal reserves the issue of costs.



Christopher Quinlan KC

Tribunal Chair

Julien Berenger

Tribunal Member

Harveen Thauli

Tribunal Member

London, UK

19 May 2025