

Legal & Procedural Frameworks in Anti-Doping

Balancing Fairness, Proportionality, and Consistency

in the Modern CAS Era

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Credit: fergregory

The Anti-Doping Ecosystem



WADA

Sets the global standards (World Anti-Doping Code). Monitors compliance but relies on other bodies for enforcement.



NADOs & IFs

National Anti-Doping Orgs & International Federations (often delegated to ITA). Responsible for testing and initial results management (done directly or delegated to CAS ADD/Sport Resolutions).



CAS

The "Supreme Court" of sport. Provides the final, binding arbitration for international disputes.

CAS: The Final Arbiter

The Court of Arbitration for Sport (CAS) plays a pivotal role in harmonizing anti-doping jurisprudence globally.

- ✓ **De Novo Review:** CAS panels can review the entire case from scratch, fixing procedural errors from lower tribunals.
- ✓ **Exclusive Jurisdiction:** For international athletes, CAS is the sole avenue for appeal, ensuring a unified interpretation of the Code.
- ✓ **Standard Setter:** Its awards create de facto precedents that shape how rules are applied worldwide. The New York Convention.



The "Strict Liability" Baseline

-  **The Core Principle:** Athletes are solely responsible for what is found in their system, regardless of intent or negligence.
-  **Burden of Proof:** Once a substance is detected (Adverse Analytical Finding), the burden shifts entirely to the athlete to prove the source and lack of intent.
-  **Rationale:** Designed to protect the integrity of sport; proving "intent to cheat" would be nearly impossible for authorities in every case.
-  **The Tension:** This rigid standard often clashes with concepts of procedural fairness when contamination or sabotage is involved.

Balancing Proportionality



A Move Towards Fairness?

While the Code mandates specific sanctions, CAS jurisprudence (e.g., *Halep*) increasingly applies the general principle of proportionality, whether expressly or impliedly.

Key Trends:

- Panels are reducing bans where the standard sanction seems "excessive" relative to the degree of fault.
- Distinction between "Cheaters" and "Careless Athletes" is becoming more pronounced in sentencing.
- This flexibility ensures that strict liability doesn't result in manifest injustice.

The Consistency Challenge

Global Disparities

A major procedural hurdle is the disparity in resources. Athletes from developed nations with top legal teams often secure better outcomes ("No Significant Fault") compared to those from developing regions with limited access to specialized counsel or lesser known athletes.

Jurisdictional Variance

While CAS aims for uniformity, first-instance tribunals (National Anti-Doping Orgs) often interpret rules differently. One tribunal might ban an athlete for 2 years, while another gives a reprimand for similar facts, forcing WADA to appeal to CAS to restore consistency.

Emerging Procedural Trends

-  **The "Unintentional Doping" Defense:** A shift towards "No Fault" pleas based on contamination (e.g., meat, supplements, transdermal creams).
-  **Burden of Proof Evolution:** Cases like *Lawson* established that athletes must provide "concrete evidence" of the source, not just speculation.
-  **Case Resolution Agreements:** A (growing?) trend to settle disputes without a full hearing to save time and resources, as seen in high-profile cases.

Athletes Need to Play Defense Up Front

Winning Unintentional Doping Cases through Proactive Measures

The Reality of Doping Cases

Most reported anti-doping cases do **not** involve intentional cheating.

- ✓ Violations often stem from inadvertent mistakes.
- ✓ **Primary Culprits:** Nutritional supplements and whereabouts failures.
- ✓ **The Goal:** Implement early defenses to avoid these career-threatening pitfalls.



The Supplement Minefield

Contamination, Adulteration, and Risk



Defense Strategy: Due Diligence



Check the Label

Always compare ingredients against
the current WADA Prohibited List.

Never assume safety.



Research Online

Use resources like **Global DRO**.

Investigate the manufacturer's
reputation and history.



Consult Pros

Seek advice from doctors or sports
professionals knowledgeable about
anti-doping rules.

Defense Strategy: Documentation

Document Everything

Keep records of purchases, usage logs, and all communication with manufacturers.

Certified Suppliers

Prioritize products certified by **Informed Sport** or **NSF**.



Retain Samples

Save a small unused portion of every supplement. This is crucial for testing if a violation occurs.

Keep Receipts

Maintain a paper trail including batch/lot numbers for every product consumed.

Managing Whereabouts

Accuracy is Key

Athletes must provide accurate location info for unannounced testing. This is a strict strict liability obligation.

"I forgot to update it" is rarely an accepted excuse.

Travel Vigilance

Travel is the highest risk period for missed tests. Update your slot immediately upon itinerary changes.

Missed a test? Take it as a serious warning. Immediate action is required to prevent a strike.

"The WADA Prohibited List should be an athlete's constant companion."

Review annually. Know how to search it.



Key Takeaways

- ✓ **Proactivity:** Don't wait for a positive test to start your defense.
- ✓ **Skepticism:** Treat every supplement as a potential risk.
- ✓ **Organization:** Meticulous records can save your career.
- ✓ **Responsibility:** You are solely responsible for what enters your body.



Case Study: Valieva

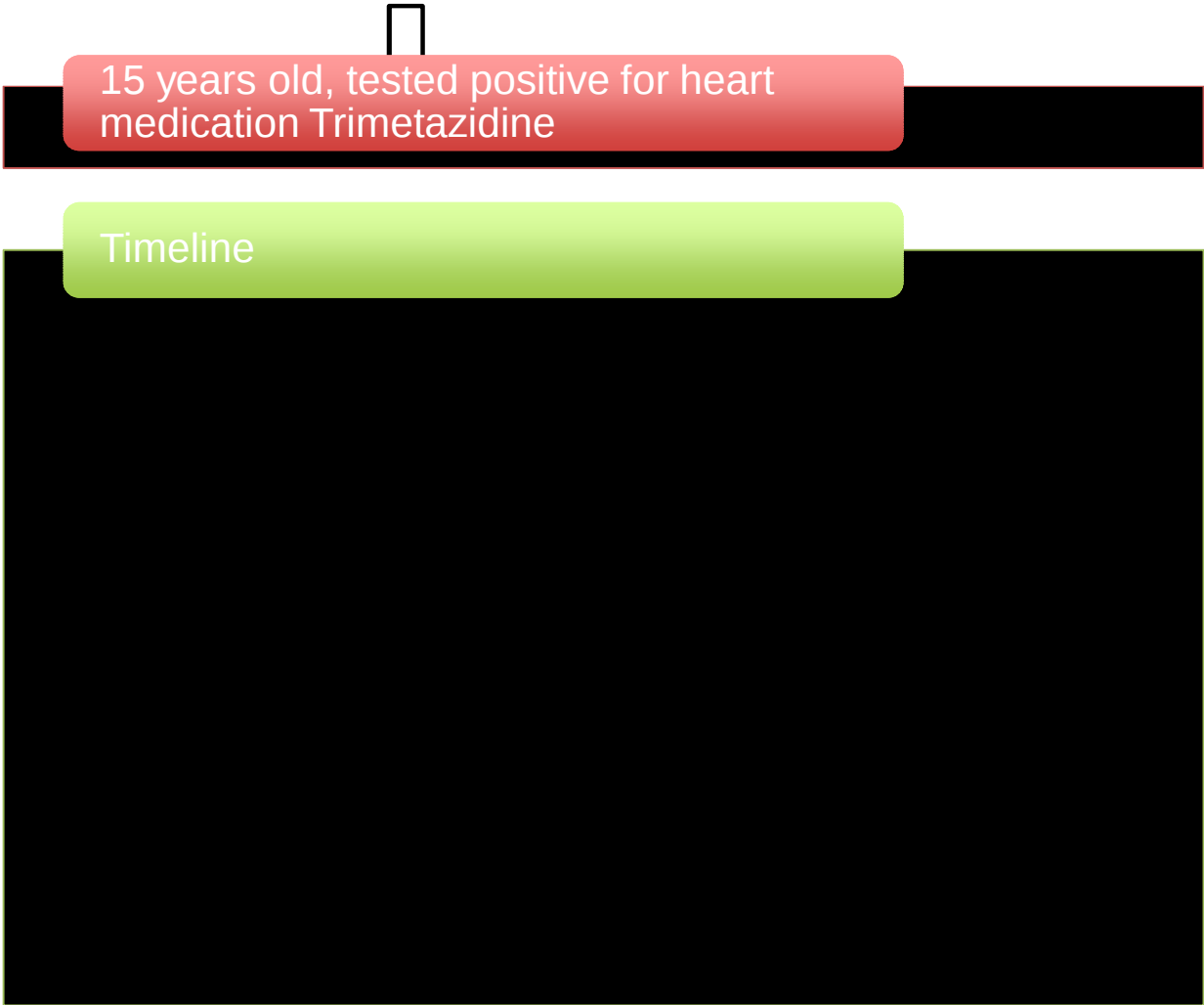
The Incident: Beijing Olympic Winter Games 2022, Russian women's figure skater is informed she tested positive for a sample collected weeks earlier for a heart medication.



The sport section of the Daily Telegraph

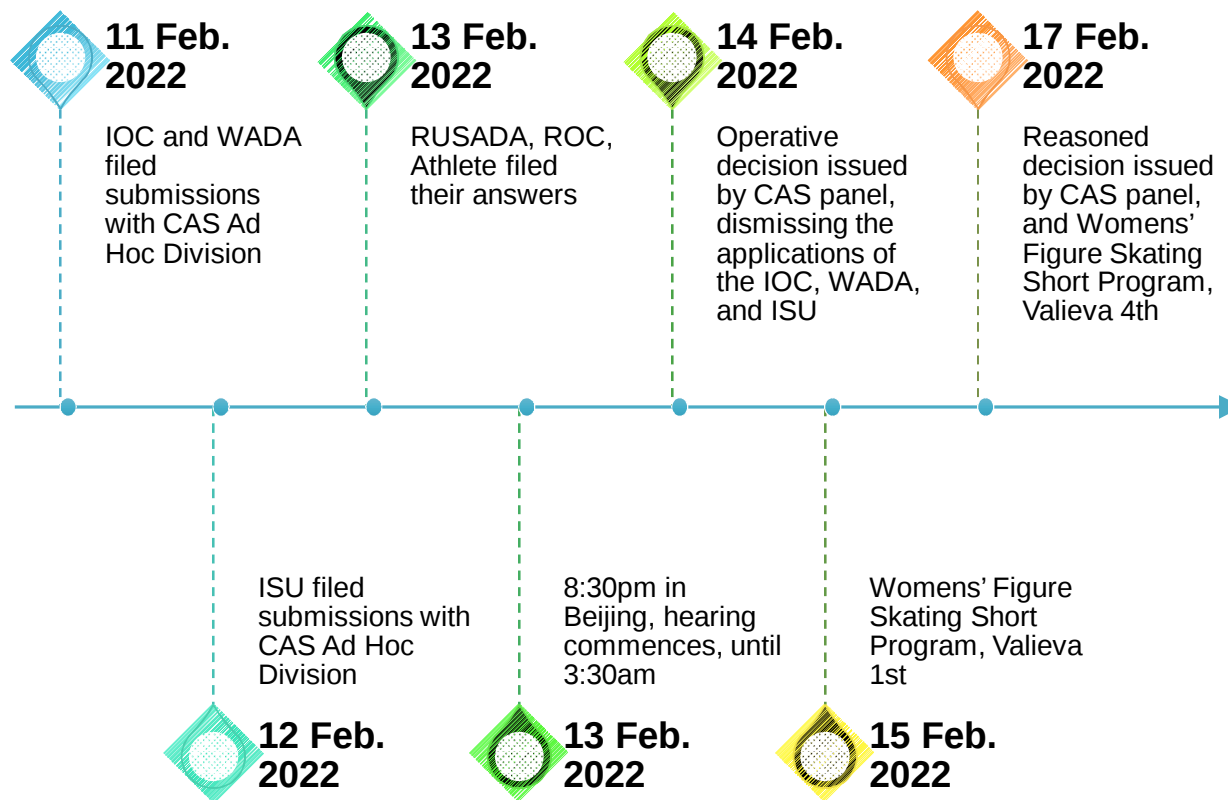
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15 years old, tested positive for heart
medication Trimetazidine

Timeline



- Not about doping per se
- Was about fairness
- Reasons:
 - There was provision for a provisional suspension to be lifted for adults

“As put well by an early CAS panel with esteemed arbitrators:

- *“The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule-apppliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable.”* CAS 94/129, para. 34.

“... This decision is based on the facts presented to the Panel, the instigating fact of which was untenable delay by the Stockholm laboratory caused by reasons not attributable to the Athlete and the anchor of which is that the Athlete is a Protected Person. This case was not about the underlying alleged anti-doping rule violation and the Panel takes no position on that; Ms Valieva will have the opportunity to challenge that evidence in other proceedings unrelated to this one, as required by the relevant anti-doping rules and regulations. Furthermore, the Panel is mindful the subject of the present decision is not whether or not the Athlete, with the status of a Protected Person, committed an ADRV, but whether or not the Provisional Suspension was to be reinstated. In the light of the circumstances above, the Panel believes that this decision is the one that best protects the interest of sport without harming athletes or vindicating the collectively well-accepted goal of ‘Clean Sport’.”

Case Study: Jannik Sinner

The Incident: In March 2024, Sinner tested positive twice for Clostebol (an anabolic steroid) at trace levels.

The Explanation: Transdermal contamination via his physiotherapist, who used a spray (Trofodermin) on a cut on his own finger before massaging Sinner.

Initial Ruling: An independent tribunal found "No Fault or Negligence," allowing him to keep playing, though he lost Indian Wells points.



Procedural Timeline: The Sinner Case



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The Case Resolution Agreement in the Sinner matter represents a pragmatic shift—prioritizing certainty over the risks of prolonged litigation.

Impact on Athlete Rights & Due Process



Transparency vs. Privacy

The Sinner case was criticized for its initial secrecy. While protecting the athlete's reputation, it raised questions about "double standards" compared to other provisionally suspended athletes.



Settlement Culture

Moving towards negotiated settlements (like the 3-month ban) empowers athletes to manage risk but may obscure the legal reasoning that helps shape future jurisprudence.

Questions & Discussion

How do we balance the strict necessity of clean sport with the nuances of accidental contamination in an increasingly complex sporting, living, and health/wellness environment?



THANK YOU!

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