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## FINA Doping Panel 01/20

### FINA Doping Panel

comprised of

Robert Fox	(SUI)	Chairman
Peter Kerr	(AUS)	Member
William Bock, III	(USA)	Member

In the proceedings against

the swimmer **Mr. Roland SCHOEMAN** (the "Athlete")

affiliated to the South Africa Swimming Federation ("RSASF")

represented by: Mr. Howard Jacobs, legal counsel

## I. THE PARTIES

1.1 The FEDERATION INTERNATIONALE de NATATION (FINA) is the International Federation governing disciplines related to swimming. 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 South Africa Swimming Federation (RSASF) is a member of FINA. RSASF is required to recognize and comply with FINA's anti-doping rules which are set out in the FINA Doping Code ("FINA DC"). The FINA

DC is directly applicable to and must be followed by *Athletes, Athlete Support Personnel*, coaches, physicians, team leaders, and club and representatives under the jurisdiction of RSASF.

1.3 The Athlete, is a member of the RSASF.

## **II. NATURE OF THE CASE**

2.1 Pursuant to out-of-competition test conducted by the International Testing Agency (ITA) on behalf of FINA on 18 May 2019 in Tempe (USA), the analytical report yielded indicated the presence of the substance GW501516 (Class S4.5. Hormone and Metabolic Modulators) (more commonly known as GW1516).

## **III. BACKGROUND OF THE ATHLETE**

3.1 The Athlete is a 39-year-old world class swimmer who originally hails from Pretoria, South Africa, but currently resides in Tempe, Arizona. He represented South Africa in the 2000, 2004, 2008 and 2012 Olympic Games; and has held World Records in the 50-meter Butterfly, 50- and 100-meter Freestyle, 100-meter Individual Medley and 4 x 100-meter Freestyle Relay events.

## **IV. PROCEEDINGS**

4.1 The Athlete was subjected to an out-of-competition urine test at his home in Tempe, Arizona on 18 May 2019. At that test, he declared having used in the past 7 days: Ambien (5mg), Zinc (500mg), Triphala

Ayurvedic Medicine (1/2tspn), Ghee (1/2tspn), Creatine (5mg), HMD (600mg), L-Glutamine (6g), Co-Q10 (3g), Beta Alanine (3g).

4.2 On 10 July 2019, the Athlete was notified that his urine sample given on 18 May 2019 had tested positive for GW 501516. On 11 July 2019, the Athlete requested that the B sample be tested and he accepted a provisional suspension as of 18 July 2019.

4.3 By letter dated 19 August 2019, FINA informed the Athlete that the B sample had confirmed the findings of GW 501516 in the urine sample. By this letter, FINA charged the Athlete with a violation of the FINA Doping Control Regulations.

4.4 By letter dated 4 September 2019 FINA forwarded the matter of the Athlete to the FINA Doping Panel (FINA DP).

4.5 By letter dated 12 September 2019, the Chairman of the FINA DP informed the Athlete of the matter having been transferred to its jurisdiction and set a deadline to 23 September 2019 for him to inform the FINA DP whether he wished a hearing or not.

4.6 By email dated 22 September 2019, Mr. Howard Jacobs, attorney, acting on behalf of the Athlete, informed the FINA DP that the Athlete requested a hearing and asked that the hearing be scheduled on a date which would be agreeable to both Athlete and the FINA DP. In addition, he stressed that the Athlete was still investigating the reason of the positive test and requested additional time to be provided to complete his investigation.

4.7 By letter dated 9 October 2019, the Chairman of the FINA DP informed the Athlete through his attorney that a hearing had been set for 22 November 2019 in Lausanne at FINA Headquarters and that a deadline to

15 November 2019 was set for him to file his brief and exhibits which he wished to use to present his defence.

4.8 By letter dated 18 October 2019, the attorney of the Athlete informed the FINA DP that he wished the hearing to be postponed until January 2020. The reason was the ongoing investigation relevant to 23 different products and other possible causes of the positive test. He requested the hearing be postponed to the weeks of 13 or 20 January 2020.

4.9 By letter dated 28 October 2019, the FINA DP informed the Athlete's attorney that the postponement was accepted.

4.10 By letter dated 18 November 2019, the FINA DP informed the attorney and the Athlete that the hearing was set for Friday 24 January 2020 in Lausanne. A deadline to 25 November 2019 was set to make any request of recusal of the FINA DP and another deadline to 7 January 2020 was set to provide a defence brief and any exhibits which the Athlete wished to rely on to present his defence.

4.11 On 7 January 2020, the Athlete through his attorney filed a pre-hearing brief along with 52 exhibits and a request to have Mr Schoeman, the Athlete, testify, as well as Mr. Paul Scott of Korva labs.

4.12 A hearing was held in FINA Headquarters on 24 January 2020. The Athlete was represented at the hearing by Mr. Jacobs. Mr Schoeman and Mr Scott testified at the hearing. The FINA DP was able to question the witness and the Athlete and to pose questions to the attorney of the Athlete.

4.13 At the end of the hearing, the FINA DP requested additional information from the Athlete, notably a chart showing the supplements he used and which were certified, and by which "certifier". This information was provided on 28 January 2020.

## V. JURISDICTION AND APPLICABLE RULES

5.1 The jurisdiction of the FINA Doping Panel arises out of the following provisions of the FINA Rules: C 22.8, C 22.9 and DC 8.1.

5.2 The applicable Rules in this case are the FINA DC in effect since 1<sup>st</sup> January 2015 (accepted in November 2014 in Doha).

5.3 Rules that bear on the decision of the FINA DP in this case include:

### **DC 2.1 Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*.**

#### **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 be demonstrated in order to establish an anti-doping rule violation under DC 2.1.

#### **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 *Athlete's* A Sample; or, where the *Athlete's* B Sample

is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.

### **DC 3.1 Burdens and Standards of Proof**

FINA and its *Member Federations* shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether FINA or the *Member Federation* has occurred. The standard of proof shall be whether FINA or the Member Federation has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the *Athlete* or other *Person* alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

## **DC 10 SANCTIONS ON INDIVIDUALS**

### **DC 10.1 *Disqualification* of Results in the *Competition* during which an Anti-Doping Rule Violation Occurs**

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 *Disqualification* of all of the *Athlete's* individual results obtained in that *Competition* with all Consequences, including forfeiture of all medals, points and prizes, except as provided in DC 10.1.1.

Factors to be included in considering whether to *Disqualify* other results in a *Competition* might include, for example, the severity of the *Athlete's* anti-

doping rule violation and whether the *Athlete* tested negative in the other *Events*.

**DC 10.2 *Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method***

The period of *Ineligibility* imposed for a first violation of DC 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension of sanction pursuant to DC 10.4, 10.5 or 10.6:

**DC 10.2.1** The period of *Ineligibility* shall be four years where:

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

**DC 10.2.1.2** 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 10.2.2** If DC 10.2.1 does not apply, the period of *Ineligibility* shall be two years.

**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.

**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 10.5.1.2 *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 10.5.2 Application of *No Significant Fault or Negligence* beyond the Application of DC 10.5.1.**



If an *Athlete* or other *Person* establishes in an individual case where DC 10.5.1 is not applicable that he or she bears *No Significant Fault or Negligence*, then, subject to further reduction or elimination as provided in DC 10.6, the otherwise applicable period of *Ineligibility* may be reduced based on the *Athlete* or other *Person's* degree of *Fault*, but the reduced period of *Ineligibility* may not be less than one-half of the period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this rule may be no less than eight years.

#### **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.

##### **DC 10.11.1 Delays not attributable to the *Athlete* or other *Person*.**

Where there have been substantial delays in the hearing process or other aspects of *Doping Control* not attributable to the *Athlete* or other *Person*, the body imposing the sanction may start the period of *Ineligibility* at an earlier date commencing as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of *Ineligibility*, including retroactive *Ineligibility*, shall be *Disqualified*.

##### **DC 10.11.2 Timely Admission.**

Where the *Athlete* or other *Person* promptly (which, in all *events*, means for an *Athlete* before the *Athlete* competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by FINA

or a *Member Federation*, the period of *Ineligibility* may start as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this rule is applied, the *Athlete* or other *Person* shall serve at least one-half of the period of *Ineligibility* going forward from the date the *Athlete* or other *Person* accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or date the sanction is otherwise imposed. This rule shall not apply where the period of *Ineligibility* has already been reduced under DC 10.6.3.

**DC 10.11.3** If a *Provisional Suspension* is imposed and respected by the *Athlete* or the other *Person*, then the *Athlete* or the 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.

**DC 10.11.4** If an *Athlete* or the other *Person* voluntarily accepts a *Provisional Suspension* in writing from FINA or a *Member Federation* and thereafter refrains from competing, the *Athlete* or the other *Person* shall receive a credit for such period of voluntary *Provisional Suspension* against any period of *Ineligibility* which may ultimately be imposed. A copy of the *Athlete* or the other *Person's* voluntary acceptance of a *Provisional Suspension* shall be provided promptly to each party entitled to receive notice of an asserted anti-doping rule violation under DC 14.1.

**DC 10.11.5** No credit against a period of *Ineligibility* shall be given for any time period before the effective date of the *Provisional Suspension* or voluntary *Provisional Suspension* regardless of whether the *Athlete* elected not to compete or was suspended by his or her team.

## VI. LEGAL DISCUSSION

### 6.1 Motions and contentions of the Athlete.

The Athlete contended:

6.1.1 That he had never previously had a positive doping control in numerous prior anti-doping tests, spanning over a two-decade year period.

6.1.2 That he did not intend to use a prohibited substance.

6.1.3 That he acted reasonably and diligently to avoid a positive test, for instance, generally using only products that had been certified by an independent third-party certifier.

6.1.4 That despite his diligence in testing all products which he believed could reasonably have been the cause of his positive test, and spending approximately \$16,500 on this testing, that he was unable to determine the source of his positive test.

6.1.5 That the most likely source of his positive test was some sort of contamination because:

a) GW1516 – which is also known as Cardarine and Endurabol, went through clinical studies in the early 2000's, but those studies were abandoned in 2007. It does not appear that GW1516 is available for purchase other than as a supplement (although sometimes labelled as being "*for research purposes only*" despite its clear marketing as a nutritional supplement).

b) GW1516 is also not particularly difficult to detect in urine samples, and is detectable in a urine sample for 40 days after a single oral dose of 15 mg.

c) Despite the fact that GW1516 was not found in any of the supplements tested by the athlete, there is evidence that it has been found in other nutritional supplements which did not disclose it on the label.

d) There were low levels of GW1516 found in Mr. Schoeman's urinalysis (1.3 ng/mL);

e) The athlete had no prior knowledge of GW1516 whatsoever;

f) GW1516 is not legally permitted in any medications, supplements or foods, but anti-doping organizations have cautioned that nutritional supplements may be contaminated with this substance.

g) The athlete had never tested positive for GW1516 or any other banned substance in his athletic career prior to his positive test on 18 May 2019. In addition, his test 52 days prior to the positive test (on 27 March 2019) was negative and his test 32 days after the positive test (on 19 June 2019) was likewise negative.

h) The fact that the two tests in March and June were negative is inconsistent with regular, intentional use of the substance, but consistent with possible contamination. The athlete provided in his exhibits a research article of a study written by Tim Sobolevsky, Marina Duikunets, Irina Sukhanova, Edward Virus and Grigory Rodchenkov, according to which *"For comparative purposes, GW1516 excretion study was also performed. It has been shown that GW1516 and GW0742 are best monitored as the sulfone metabolites which are detectable in urine using LC-MS/MS based procedure up to 40 and 20 days after a single oral dose of 15 mg each, respectively. The unmetabolized compounds are measurable only for a*

*short period of time and at low ng/ml level. The sulfoxide-to-sulfone ratio for both GW1516 and GW0742 changed irregularly in the range of 1:3 to 1:15 depending on time elapsed after administration with a tendency of increasing the ratio with time. The other important finding was that the abundance of GW0742 and its metabolites in urine is about ten times lower than in case of GW1516.”*

6.1.6 The athlete carefully scrutinized the supplements he consumed, none of which could be reasonably characterized as “*risky supplements*”. Indeed, while he had used a great number of supplements most were supplements which contained only a single ingredient such as a mineral and most did not contain a mixture of ingredients, which the athlete felt was a riskier supplement. He considered supplements containing only a single mineral as more akin to a vitamin and less risky.

6.1.7 The athlete exercised extreme diligence in his choice of supplements, in that he never used bodybuilding supplements, nor any which would have appeared to be risky or contain known “*USADA Supplement 411*” flags. He cross-referenced all ingredients on the website [www.globaldro.com](http://www.globaldro.com).

6.1.8. Also, many of the supplements the athlete was using were Ayurvedic products which the athlete understood to be natural herbs.

6.1.9 The athlete had Mr. Paul Scott testify. Mr. Scott is laboratory director of Korva Labs, to whom the athlete sent supplements to be tested. Mr. Scott testified that the detection window of GW1516 was approximately 40 days. Had the athlete used a 15-20 mg oral dose of the substance, in this case, it would likely have had to have been limited to use within a week after his negative test in March, then discontinued, which would be inconsistent with a regular, intentional use of the substance. This is because intentional use would imply ingesting the substance over a cycle of 4 to 8

weeks. Hence the hypothesis of a regular, intentional use of the substance in his opinion was highly unlikely.

6.1.10. The athlete also contended that there was a substantial delay in notifying him of his positive test that should be considered pursuant to FINA DC 10.11.1 in order to adjust the commencement date of his period of ineligibility, particularly because that delay may have contributed to his inability to identify the source of his positive test.

6.2 Factual findings of the FINA Doping Panel.

#### **Athlete's degree of diligence in Seeking to Avoid a Positive Test**

6.2.1 The FINA DP considered that the athlete used an impressive quantity of supplements. While the FINA DP understands that all the of supplements tested for the purpose of this case (in excess of 30 supplements which the athlete had used over a multi-year period) were not the number of supplements which the athlete was using at any one time, which was far less, the number of supplements the athlete acknowledged taking and which were on his doping control form (8) was still high. Generally, the degree of risk of consuming a contaminated product is increased when greater numbers of supplements are taken. Although, as explained below, the athlete demonstrated a degree of caution, in trying to take primarily certified supplements, the FINA DP ultimately concluded that he would be unable to take maximum advantage of a potential reduction under the contaminated products rule because of the sheer number of supplements the athlete consumed, some of which were not certified.

6.2.2 The athlete pointed out that he tried to have as much as possible only natural substance and one substance supplements. He generally stayed away from pre-workout and post workout supplements. While this is indicative of a degree of caution, it was less than the maximum degree of

caution that could have been exercised.

6.2.3 With respect to the general nature of the supplements he used, Mr. Schoeman appeared to be relatively thoughtful. For instance, he testified that he chose Ayurvedic supplements because they appealed to him as apparently wholesome and consistent with a natural lifestyle. Nonetheless, there did not appear to be a rigorous evidentiary basis for this belief. And, as noted, while he preferred certified supplements, the evidence reflected that he did not always stick with his preference for certified supplements. On the whole, the FINA DP regarded Mr. Schoeman to have been moderately diligent in his approach toward supplements. There was certainly no evidence that he was seeking an unfair advantage over his competitors through supplementation or that he hoped to consume a prohibited substance or even that he realized there was any significant risk that he might consume a prohibited substance through the supplements he was taking.

#### **Delay in Notice to the Athlete of His Positive Test**

6.2.4 Regrettably, notice to the Athlete of his positive test was delayed through no fault of the Athlete for nearly two months after sample collection and until 10 July 2019.

6.2.5 Neither FINA nor the WADA accredited laboratory provided any explanation for this delay.

6.2.6 Significantly, a more prompt notification to the Athlete could have benefited the Athlete in identifying the source of his positive test and the delay in notification certainly prejudiced the Athlete by making it less likely that he could find the source. For instance, because of the delay in notification the Athlete could not test the precise batches of the supplements he was using at the time of his positive test.

### **The Athlete's Positive Test and Provisional Suspension**

6.2.7 On 20 July 2019 the Athlete was notified of his positive test from the 18 May doping control.

6.2.8 From 18 July 2019 the Athlete refrained from participating in any competitions or other activities organized by FINA.

6.2.9 Had the Athlete received earlier notice of his positive test he would almost certainly have accepted a voluntary provisional suspension long before 18 July 2019.

### **Athlete's Diligence in Seeking to Determine the Source of His Positive Test**

6.2.10 The Athlete and his attorney promptly sought to test a variety of supplements the Athlete was using around the time of his positive test and invested quite a bit of resources for this, as he had all the supplements he was using or had used within the previous two years tested. This cost no less than US\$16'000.- (sixteen thousand dollars).

There is no suggestion that the Athlete failed to test any product that was a reasonable possibility to have been the source of his positive test. However, despite the exercise of due diligence, the Athlete was unable to identify the source of his positive test. As noted above, the delay in notifying the Athlete of his positive test prevented him from testing the precise batches of the products he was using at the time of his positive test.

### **6.3 Legal conclusions of the FINA Doping Panel**

The FINA DP has reached the following legal conclusions in this case:



6.3.1 The Athlete has committed his first anti-doping rule violation as a result of the positive test for GW1516 in his Sample.

6.3.2 FINA has not sought to prove that the Athlete's anti-doping rule violation was intentional, there is no evidence that his rule violation was intentional, and under the unique circumstances in this case the Athlete was able to establish as required by FINA DC 10.2.1.1 that his anti-doping rule violation was not intentional. In this regard, there was strong evidence of the Athlete's honesty and integrity and of his diligence in seeking to comply with the anti-doping rules and of his relentless and costly search for the cause of his positive test and this evidence was supported by testing evidence (explained further below) which supported the conclusion that his ingestion of the prohibited substance was not intended to enhance performance or to allow him to "cheat" and this evidence was coupled with evidence of a significant impediment, not of the athlete's own making, which prevented him from testing the precise batches of products used by the Athlete at the time of his positive test; therefore, the FINA DP finds that his rule violation was not intentional and he could not be subject to more than two years ineligibility pursuant to FINA DC 10.2.2.

6.3.3 It is true that despite due diligence, the Athlete has not established precisely how the Prohibited Substance entered his system and in most circumstances this would prevent a further mitigation of the Athlete's sanction below two year's ineligibility.<sup>1</sup> The FINA Doping Panel however accepts that the Athlete was able to establish that while he was not able to prove which substance was contaminated, on a balance of probability he established that the origin of the prohibited substance found in his sample

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<sup>1</sup> Both the Definition of "No Significant Fault or Negligence" ("NSFON") and the Contaminated Products Rule (FINA DC 10.5.1.2) by reference to the NSFON definition require the Athlete to establish "how the *Prohibited Substance* entered his or her system."

likely originated in a contaminated product and that factors outside his control and chargeable to the relevant anti-doping organization and/or laboratory contributed to his failure of proof and should consequently result in a lessening of his obligation to precisely identify the specific supplement that caused his positive test. This conclusion is based on the following grounds:

- a) There were low levels of a metabolite of GW1516 found in his sample (1.3 ng/mL);
- b) GW1516 is not legally permitted in any medications, supplements or foods, but it is known that this substance can contaminate supplements, as anti-doping organizations have cautioned Athletes about this risk;
- c) The Athlete tested negative before and after the positive test and the detection window of GW1516 is approximately 40 days after a one time use of 15 mg. Had the Athlete used a standard dose of the substance, in this case, it likely would have had to have been limited to within a week after his negative test in March, then discontinued, which as set forth above is inconsistent with a regular, repeated, intentional use of the substance, but would be consistent with the accidental consumption of a contaminated product;
- d) There would be little to no benefit to an Athlete to use a product such as GW1516 on only a single occasion;
- e) Therefore, the bookend negative test results provide significant assurance to the Panel that the athlete was likely not using the product intentionally to cheat or enhance his performance;
- f) Moreover, through no fault of his own the Athlete was deprived by the delay in notification to him of his best opportunity to identify the precise

source of his positive test by testing the batches of the supplements he was using at the time of his positive test;

- g) The Athlete exhibited his diligence in seeking to identifying how the Prohibited Substance entered his system by moving promptly and diligently to test his supplements and expending a very significant sum of money to attempt to test every supplement he had taken in the last 2 years, demonstrating that had notification to him been timely given that the Athlete would almost certainly have tested the precise products he was using at the time of his positive testing, greatly increasing the odds of him successfully identifying the precise product that caused his adverse analytical finding;
- h) Under these circumstances, where the best opportunity to precisely identify the product which caused his positive test was deprived by the entity which is prosecuting the case against him, the FINA DP finds that the burden upon the Athlete to precisely identify the specific product which caused his positive test must be lessened.

6.3.4 Regarding sanction, pursuant to FINA DC 10.5.1.2, where an Athlete can establish no significant fault of negligence, when the detected substance came from a contaminated product, 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 degree of fault. In this instance, the FINA Doping Panel accepts to go below this period of ineligibility and sanction the Athlete with a twelve (12) month period of ineligibility for the following reasons.

- a) Mr. Schoeman appeared to the FINA Doping Panel as an Athlete who exercised significant diligence in his choice and use of supplements. He never used bodybuilding supplements; he cross-referenced all ingredients on well-known websites, and he generally used certified

supplements.

- b) Regardless of his careful diligence, it would have been very difficult for him to have found the presence of the prohibited substance, as it would appear to be a substance not always mentioned on labels of supplements;
- c) The Athlete from 18 July 2019 refrained from participating in any competitions or other activities organized by FINA. Had the Athlete received earlier notice of his positive test he would likely have accepted a voluntary provisional suspension long before 18 July 2019, and in addition, he requested a delay of the hearing in order to pursue testing of the supplements;

6.3.5 Taking into consideration the time lost in informing the Athlete of the adverse analytical finding, the Athlete's period of Ineligibility shall start on 18 May 2019 due to substantial delay in notification to him of his positive test which prevented him from earlier accepting a provisional suspension.

6.3.6 According to FINA DC 10.8, in addition to the automatic disqualification of the results in the Event which produced the positive Sample under FINA 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 any 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 the resulting consequences including forfeiture of any medals, points and prizes.

The Athlete competed in certain events after the adverse analytical find on 18 May 2019 and before the provisional suspension on 18 July. Hence, the results, obtained by the Athlete on or after 18 May 2019 through and

including the date of this decision are disqualified. Any medals, points and prizes achieved during that period shall be forfeited.

This point was not formally addressed in the operative decision communicated to the Athlete after the hearing, but justifies that the operative part of the decision be rectified to take this point into account. Hence the rectified decision of the FINA DP is set forth below accordingly.

## VII. CONCLUSION

7.1 Mr. Roland Schoeman is found to have committed an anti-doping rule violation under FINA DC Rule 2.1 – presence of prohibited substance **GW501516** in an Athlete’s sample (Class S.4 Hormones and Metabolic Modulators)

7.2 Mr. Roland Schoeman is sanctioned with a **12-month** ineligibility period. The sanction starts on 18 May 2019 and will end on 17 May 2020 in accordance with FINA DC Rule 10.11.1. In accordance with FINA DC Rule 10.8, all results, obtained by the Athlete on or after 18 May 2019 through and including the date of this decision are disqualified. Any medals, points and prizes achieved during that period shall be forfeited.

7.3 All costs of this case shall be borne by Swimming South Africa in accordance with FINA DC 12.3.

7.4 Any appeal against this decision may be referred to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland not later than twenty-one (21) days after receipt of the complete and reasoned judgement (FINA Rule C 12.11.4 and DC 13.7).

Robert Fox  
Chairman

Peter Kerr  
Member

William Bock, III  
Member

Signed on behalf of all three Panel Members



Robert Fox