

IRONMAN ANTI-DOPING PROGRAM

**IN THE MATTER OF AN ARBITRATION PURSUANT TO THE WTC HEARING
PROTOCOL AND ARBITRATION RULES FOR ANTI-DOPING RULE VIOLATIONS
AND OTHER DISPUTES UNDER THE IRONMAN ANTI-DOPING PROGRAM**

BETWEEN:

Mr. Maurizio Carta

Athlete

Applicant

AND:

World Triathlon Corporation

WTC

Respondent

The Arbitrator:

Henri C. Alvarez, Q.C.
VANCOUVER ARBITRATION CHAMBERS
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Vancouver, BC V6C-3E8
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I. INTRODUCTION

1. This award addresses the appeal of Mr. Maurizio Carta (“Mr. Carta” or the “Athlete”) against the 4-year suspension imposed by the World Triathlon Corporation (“WTC” or the “Respondent”) for refusing to provide a blood sample required for anti-doping testing on 5 October 2016, in advance of the 2016 IRONMAN World Championships Race in Kona, Hawaii. Mr. Carta was selected for Out-of-Competition blood testing conducted by the WTC three days in advance of the IRONMAN World Championship Race, but refused to provide a blood sample as requested on the basis that he had a phobia of needles. He offered to provide a urine sample instead. This was not acceptable to the WTC and Mr. Carta was suspended pursuant to the terms of the IRONMAN Anti-Doping Rules for the mandatory period of 4 years. The essential facts are largely undisputed. Mr. Carta’s appeal is that, in the circumstances of his refusal to provide a blood sample, no suspension was warranted. Alternatively, he submits that a 2-year suspension should be substituted.

II. THE PARTIES

2. Mr. Carta is a 44-year-old triathlete with a background in both cycling and triathlon. He is an Italian national. It appears that Mr. Carta competed as a professional cyclist from approximately 2003 until 2008 when, due to injuries, he stopped competing professionally. In 2014, he decided to start training to participate in IRONMAN competitions as an amateur. In that year, he competed in the elite men’s category in the 2014 Challenge Fort Village Race and finished 14th overall. He qualified for the IRONMAN World Championships by finishing second in the 40-44 age group, and 19th overall, in a field of 2866 registered athletes competing at the 2016 IRONMAN Austria Competition.

3. WTC is a corporation which organises, promotes, and licenses various events including the IRONMAN Triathlon Series, the IRONMAN 70.3 Triathlon Series and other multi-sports events. In 2005, WTC, doing business as IRONMAN, became a signatory to the World Anti-Doping Code (“the Code”) for all IRONMAN Triathlon Competitions, while operated by the WTC itself or its licensees. WTC is recognised by the World Anti-Doping Agency (“WADA”) as a signatory to the Code with all the rights and responsibilities of an international federation as described in the Code, under the category of organisations without national federations. As an anti-doping organisation

under the Code, WTC adopted and implemented the IRONMAN Anti-Doping Rules. The Rules form part of the IRONMAN Anti-Doping Program which includes test distribution planning, sample collection and testing, all in compliance with the requirements of the WADA.

4. In these proceedings, Mr. Carta acted on his own behalf. WTC was represented by Mr. Richard R. Young of Bryan Cave LLP, 90 South Cascade Avenue, Suite 1300, Colorado Springs, CO 80903-1615, USA.

III. PROCEDURAL BACKGROUND

5. On 6 October 2016, Mr. Carta was formally notified in writing by the WTC of his anti-doping rule violation, disqualification from the IRONMAN World Championships and provisional suspension.¹

6. On 21 October 2016, Mr. Carta provided a response, by email, together with a note from a psychiatrist, Dr. Mignano.²

7. On 22 October 2016, Mr. Carta was notified in writing by WTC of the charge of anti-doping rule violation and notice of terms of sanction under the IRONMAN Rules.³ This document identified the appropriate length of sanction for Mr. Carta's refusal to provide a blood sample as 8 years on the basis that it was a second anti-doping rule violation.

8. On 28 October 2016, Mr. Carta responded to the WTC's Charge of Anti-Doping Rule Violation, explaining his previous anti-doping rule violation and questioning the severity of the sanction imposed on him.⁴

9. On 23 February 2017, WTC wrote to Mr. Carta to inform him that it had completed a review of his submissions and the accompanying records sent in response to the charge of an anti-doping rule violation and determined that the period of suspension for his anti-doping rule violation had been reduced to 4 years since his previous violation had occurred more than 10 years

¹ Respondent's Exhibit 7a.

² Respondent's Exhibit 8.

³ Respondent's Exhibit 9.

⁴ Respondent's Exhibit 10.

prior to his latest violation. The WTC then went on to advise Mr. Carta that he could sign an Acceptance of Sanction Form pursuant to the terms of the IRONMAN Anti-Doping Program or he could request a hearing to contest the proposed sanction in accordance with the WTC Hearing Protocol and Arbitration Rules for Anti-Doping Rule Violations and Other Disputes under the IRONMAN Anti-Doping Rules.⁵

10. On 3 March 2017, Mr. Carta advised the WTC of his intention to contest the charge of anti-doping rule violation. He also requested that since he was not economically able to ask for a hearing or to be represented by counsel, a decision be adopted on the basis of his previous submissions in appeal of the original notification of the charge of an anti-doping rule violation. In response, Ms. Mittelstadt, Director, IRONMAN Anti-Doping Program, provided further information to Mr. Carta about the appeal and hearing procedure under the IRONMAN Anti-Doping Program. She also provided Mr. Carta with an Applicant's Request for Arbitration form.⁶

11. On 17 March 2017, Mr. Carta submitted his request for arbitration to McLaren Global Sport Solutions ("MGSS") pursuant to the WTC Hearing Protocol and Arbitration Rules. In his request for arbitration, Mr. Carta set out the basis for his request to have the charge of an anti-doping rule violation against him annulled and, in the alternative that the sanction be reduced to a 2-year suspension. He also attached a copy of the Athlete Refusal Form completed on 6 October 2016 and a copy of the certificate from Dr. Mignano.⁷

12. On 22 March 2017, MGSS notified the parties that Mr. Henri Alvarez had been appointed as the arbitrator in this case (the "Arbitrator").

13. On 7 April 2017, the Arbitrator conducted a procedural conference by way of telephone conference call with Mr. Carta, counsel for the Respondent WTC, Mr. Richard Young, and Ms. Mittelstadt to discuss and determine the procedure for this arbitration. The conference call was conducted in English and a qualified interpreter was provided to assist Mr. Carta in the event this was necessary. During the telephone conference, the parties agreed to a schedule for the exchange

⁵ Respondent's Exhibit 11.

⁶ Respondent's Exhibit 11A.

⁷ See Applicant Request for Arbitration form and accompanying documents.

of submissions. In addition, the applicant waived the right to an in-person hearing due to financial circumstances and requested that, if a hearing was conducted, this would be done by way of teleconference or video conference. The schedule for the exchange of submissions was recorded in Procedural Order No. 1 which was issued on 24 April 2017 after consultation with the parties.

14. On 28 April 2017, pursuant to the terms of Procedural Order No. 1, the WTC submitted its Pre-Hearing Brief and exhibits.

15. On 12 May 2017, Mr. Carta submitted his Reply Brief. On 19 May 2017, the WTC submitted its Rebuttal Brief. In its Rebuttal Brief, the WTC stated that in light of the arguments and materials submitted by the parties, there was no need for an evidentiary hearing, as had been originally suggested by Mr. Carta.

16. On 19 May 2017, the arbitrator acknowledged receipt of the WTC's Rebuttal Brief and its suggestion that no evidentiary hearing was required and that the Arbitrator should proceed to determine Mr. Carta's appeal on the basis of the parties' written submission and materials submitted to date. The Arbitrator requested that Mr. Carta confirm that he agreed that no evidentiary hearing was required and that the case should be determined on the basis of written submissions and documents filed to date, without any further written submissions, evidence or argument.

17. On 26 May 2017, Mr. Carta confirmed that he agreed that the decision in this matter should be adopted on the basis of the statements and documents filed, without further written communications, evidence or argument.

18. On 26 May 2017, the arbitrator acknowledged receipt of Mr. Carta's agreement that the arbitration should be determined on the basis of the statements and documents already filed, without the need for further submissions. Accordingly, the date tentatively reserved for a hearing was released.

IV. BACKGROUND FACTS

19. Mr. Carta has a background in cycling and triathlon. In 2003, he became a professional cyclist with the professional cycling team “Miche”. On 24 August 2005, while competing at the Nobili Rubinetterie Grande Prix Cycling Race, Mr. Carta was tested for drugs and tested positive for the prohibited anabolic steroid, Clostebol. The Polish Cycling Federation, from which Mr. Carta held a licence, initially sanctioned Mr. Carta with a warning. However, that decision was appealed by the Union Cycliste Internationale (the “UCI”) to the Court of Arbitration for Sports (“CAS”) and the sole arbitrator appointed in the appeal imposed a 2-year suspension on Mr. Carta, effective as of the date of notification of the award in or about April 2006 and ordered that all competitive results obtained as of 24 August 2005 through to the term of his suspension be disqualified.⁸

20. Mr. Carta has also competed as an elite-level triathlete. He was a member of the Italian Triathlon Team. In 2003, Mr. Carta finished 5th in the elite men’s field at the 2003 ITU World Championship Long Distance Triathlon.

21. Mr. Carta suffered a number of injuries and accidents commencing in 2006 during his period of suspension. As a result, in 2009, Mr. Carta withdrew from cycling and triathlon competition. Sometime later, he began training again and entered to compete in his age group in the elite men’s 2014 Challenge Fort Village (equivalent to a 70.3 IRONMAN distance). Mr. Carta finished 14th overall in that event. Mr. Carta competed in the IRONMAN Austria on 26 June 2016. He finished 2nd in his age group (40-44) and qualified to compete in the IRONMAN World Championship later that year.

22. On the following day, 27 June 2016, Mr. Carta signed a form entitled “2016 World Championship Events Anti-Doping and Qualifying Slot Waiver for Age Group Athletes” (“Anti-Doping Slot Waiver”). This form contained a number of terms and conditions, including acknowledgement and consent to the applicable rules, in particular, the WTC IRONMAN Anti-Doping Rules. In this regard, the Anti-Doping Slot Waiver provided as follows:

⁸ See TAS 2005/A/982, UCI v. Maurizio Carta; Union Cycliste de Pologne, Respondent’s Exhibit 2.

(i) Athlete acknowledges that he/she has read, fully understands and voluntarily consents to each of the Competition/Conduct/Doping Rules, all which are incorporated by reference into this Agreement as if set forth fully herein. Without limiting the foregoing, Athlete acknowledges notice of the Anti-Doping Rules in effect as of the date of the applicable Event, and acknowledges that he/she is bound by them.

(ii) Athlete is responsible for personally knowing and complying with, and Athlete agrees to at all times comply fully with, all Competition/Conduct/Doping Rules.

(iii) IRONMAN® *Registered Testing Pool*. Athlete acknowledges that, as a condition of entry into any Event, Athlete may be placed into the IRONMAN® Registered Testing Pool (as defined in WTC's IRONMAN® Anti-Doping Rules) and must comply with the obligations therein.⁹

23. The Anti-Doping Slot Waiver refers to the IRONMAN 2016 Competition Rules¹⁰ which, in turn, also refer to an athlete's obligation to comply with the IRONMAN Anti-Doping Rules, including the Code and the WADA International Standards. Compliance with the IRONMAN Anti-Doping Rules was also included in the IRONMAN World Championships Athlete Guide 2016.¹¹

24. Mr. Carta travelled to Kona, Hawaii with his wife and daughter to compete in the 2016 IRONMAN World Championships. On 5 October 2016, Mr. Carta was notified by the United States Anti-Doping Agency ("USADA") of his selection for an Out-of-Competition test which was being conducted as part of the IRONMAN Anti-Doping Program. He had been pre-selected for this anti-doping test because of his history as a professional cyclist and elite age group triathlete and his exceptional performance in the recent IRONMAN Austria Competition.

25. After registering to participate in the competition, Mr. Carta was notified that he had been selected for Out-of-Competition testing and was escorted by the USADA doping control officer to the doping control station. Mr. Carta was accompanied to the station by his wife, who served as his Athlete Representative, his daughter, and a volunteer translator.

⁹ Respondent's Exhibit 14.

¹⁰ See Respondent's Exhibit 15, Section 2.03. A copy of the Competition Rules in Italian was also submitted.

¹¹ Respondent's Exhibit 16, p. 27.

26. Mr. Carta advised the USADA doping control officer assigned to conduct the sample collection that he had a phobia of needles and refused to provide the required blood sample. The doping control officer explained to Mr. Carta that if he refused to provide a blood sample he would not be permitted to race and that there would be sanctions, including a suspension of up to 4 years.¹² For a period of approximately one hour to ninety minutes, the USADA doping control officer and two USADA blood control officers spoke with Mr. Carta and his wife with the assistance of a translator, to attempt to reassure him and encourage him to comply with the required sample collection. It appears that Mr. Carta was also given time to discuss this situation with his wife, who acted as his Athlete Representative.

27. The USADA blood control officers recorded that they attempted to put Mr. Carta's mind at ease by explaining the process to him and offered to make accommodations, including allowing him to lie down to have the sample taken or to have his wife accompanying him so that she could keep an eye on the process so that he could avoid looking at the needle. The blood control officers also reported that Mr. Carta spent time on his telephone, apparently looking things up on the internet. Mr. Carta was also encouraged to watch some of the other athletes having their samples taken and how quick the process was.¹³

28. After it became clear that Mr. Carta was maintaining his refusal to provide a blood sample, the USADA doping control officer informed Ms. Mittelstadt that she was going to commence the completion of an Athlete Refusal Form for Mr. Carta. Ms. Mittelstadt then attended at the doping control station. She arranged to have access to another, separate room to provide greater privacy and an environment which might be more conducive to Mr. Carta providing a sample. Ms. Mittelstadt then spent approximately one hour speaking with Mr. Carta, his wife and the USADA sample collection officers, with the assistance of the translator. It appears that Ms. Mittelstadt again offered to make accommodations to assist Mr. Carta in providing a sample and asked him if there was anything he could propose to accommodate his phobia of needles and permit the

¹² United States Anti-Doping Agency Athlete Refusal Form, Respondent's Exhibit 7A. Mittelstadt Affidavit, Respondent's Exhibit 6, ¶¶ 31-61 where Ms. Mittelstadt, the Director of the IRONMAN Anti-Doping Program, gives a detailed account of the events relating to Mr. Carta's refusal to provide a blood sample.

¹³ See reports of Lorena Martinez, the USADA Doping Control Officer; Sarah Burgess, USADA Blood Control Officer; Eric Hulse, USADA Blood Control Officer: Respondent's Exhibit 7.

collection of the blood sample. According to Ms. Mittelstadt, Mr. Carta asked about providing a urine sample as an alternative to giving a blood sample. Ms. Mittelstadt says that she explained to Mr. Carta that he had been selected only for a blood test and that completing a urine test would not meet the requirements of the test selection criteria.

29. Ms. Mittelstadt says that Mr. Carta said that he had not expected that there would be blood testing and that if he had of known, he would not have accepted his slot to compete in the IRONMAN World Championships or travel to Kona for that purpose. According to Ms. Mittelstadt, she explained to Mr. Carta that his refusal to provide a blood sample would make him ineligible to compete at the IRONMAN World Championship, that his refusal would be treated as an anti-doping rule violation and that he would be subject to a sanction of at least 4 years and the public announcement regarding the facts and consequences of his refusal as required under the IRONMAN Anti-Doping rules. According to Ms. Mittelstadt, Mr. Carta and his wife understood what she said and were respectful and polite. However, Mr. Carta maintained his refusal to provide a blood sample.¹⁴

30. In view of Mr. Carta's refusal to provide a blood sample, the USADA doping control officer completed a USADA Athlete Refusal Form explaining each item on the form, which was translated for Mr. Carta and his wife. This was done in the presence of Ms. Mittelstadt. Both Mr. Carta and his wife signed the refusal form which was also signed by the USADA doping control officer.¹⁵ Ms. Mittelstadt then explained that she would have to take Mr. Carta's registration packet and that he would not be competing at the IRONMAN World Championships Race three days later. Mr. Carta left the doping control station approximately 3 hours after arriving.

31. On 6 October 2016, Mr. Carta was sent via email a Notice of Anti-Doping Rule Violation, Disqualification and Provisional Suspension pursuant to the IRONMAN Anti-Doping Rules.

¹⁴ Mittelstadt Affidavit, Respondent's Exhibit 6, ¶¶ 41-58.

¹⁵ USADA Refusal Form included as part of Respondent's Exhibit 7A. The form provided, in relevant part, as follows:

I am aware that I am violating USADA protocol and other anti-doping rules by refusing to provide a urine and/or blood Sample.

I understand I will be subject a 4-year suspension and other consequences of anti-doping rules violation including public announcement of the facts and consequences.

32. On 21 October 2016, Mr. Carta responded to his notice, as described above.
33. On 22 October 2016, Ms. Mittelstadt sent to Mr. Carta, via email, a Charge of Anti-Doping Rule Violation and Notice of Terms of Sanction under the IRONMAN Anti-Doping Rules.
34. On 28 October 2016, Mr. Carta responded, via email, to state his position and concerns regarding the proposed sanction. Mr. Carta's message read, in part, as follows:

My neglect led me not to inform on standards for the race in question, ignoring the emails that was sent to me the organisation Ironman much that I did not gave notice to my PHOBIA to the Needles. For this I take full responsibility and sanctions...but I wonder WHY I had the very same suspension of athletes who were positive who admit to using performance-enhancing substances VERY VERY HEAVY...

I keep saying that if you had analyzed WELL my case and had to keep in mind that I HAD NOT REFUSED CONTROL...I have HIGHER repeatedly asked to be subjected to other controls, but not the Needles for the PHOBIA. If I wanted to hide something (as you implied) I would not propose anything...as positivity, it would come out...if there has been...

Your goal is to punish those who use performance-enhancing drugs...BUT I DID NOT!!!!¹⁶

35. IRONMAN conducts both pre-and post-competition, Out-of-Competition testing in conjunction with the IRONMAN World Championships. The USADA is a sample collection authority for that purpose. More than 148 blood samples were collected during the pre-and post-competition testing at the 2016 IRONMAN World Championships.
36. IRONMAN selects athletes for Out-of-Competition testing pursuant to WADA's International Standard for Testing and Investigation (ISTI). Pursuant to the ISTI, in 2014, WADA adopted a technical document (Technical Document for Sports Specific Analysis) whose purpose was to identify those sports in which certain substances (Erythropoiesis Stimulating Agents (ESAs) and Growth Hormone) are most likely to be abused and as a result, should be a testing priority. Triathlon, Road Cycling and Distance Running are rated as the highest of all sports, which makes blood testing for those substances strongly recommended.¹⁷ According to the

¹⁶ Mr. Carta's email of 28 October 2016, Respondent's Exhibit 10.

¹⁷ See the Affidavit of Dr. Oliver Rabin of 28 April 2017, Respondent's Exhibit 18. Dr. Rabin is the Science Director for the World Anti-Doping Agency; ISTI, Respondent's Exhibit 19; WADA Technical Document, Respondent's Exhibit 20

Respondent's expert witness Dr. Oliver Rabin, WADA's Science Director, a number of substances and methods included on the Prohibited List, including important performance enhancing substances, can only be detected through collection and analysis of blood. These substances and methods include Haemoglobin Based Oxygen Carriers (HBOCs); Blood Transfusions (HBT); and Human Growth Hormone (HGH). Finally, according to Dr. Rabin, when blood testing is necessary, it is impossible for an Anti-Doping Organisation to collect a blood sample that does not involve the use of a needle.¹⁸

V. POSITIONS OF THE PARTIES

37. Mr. Carta admits that he refused to provide a blood sample. However, he submits that pursuant to Article 2.3 of the IRONMAN Anti-Doping Rules, refusal or failure to submit to sample collection is only a breach of the rules if it is "without compelling justification". Mr. Carta says that he stated immediately that he had a phobia of needles as confirmed by the medical certificate from Dr. Mignano dated 20 October 2016. He says that he cooperated proactively by not only explaining his refusal to provide a blood sample, but offering repeatedly to provide a urine sample. Mr. Carta explains that his offer to provide a urine test was not an expedient to avoid performing a blood test. He says he panicked and was frightened, so he thought that offering to provide a urine test was the only way of demonstrating that he was not lying.¹⁹

38. Mr. Carta also argues that he did not understand what he was signing when he signed the Anti-Doping Slot Waiver on 27 June 2016, after his 2nd place finish in his age group and the Austria IRONMAN Competition. He says that there were no interpreters present.

39. Mr. Carta also submits that consideration must be given to the fact that he is in the 40-44-year age group and an amateur. Therefore, he had no reason to engage in doping or to refuse the blood test, much less to meet all the expenses of travel to the IRONMAN Championship in Kona to then refuse the test without good reason.

¹⁸Affidavit of Dr. Oliver Rabin ¶¶ 8-12. Further, according to Dr. Rabin, some accommodations may be made for an Athlete such as providing a relaxed environment, sufficient time and explanations to reduce anxiety. However, exemptions from submitting to blood testing altogether cannot be envisaged as this would lower the efficiency of any anti-doping program and also jeopardise the key principle of equal treatment of Athletes.

¹⁹ Applicant's voluntary statement submitted with Mr. Carta's Rejoinder.

40. In the alternative, Mr. Carta submits that in the event any penalty is warranted, then his suspension should be limited to a period of 2 years, referring to Article 4. 3.1 of the Anti-Doping Code implemented by the Italian Olympic Committee. He says that he has received sufficient punishment in that he was not able to take part in the race for which he had very high hopes and for which he was prepared travel a very long distance. In addition, Mr. Carta points to the dedication of much of his life to sports, first at a professional level and then, after several accidents, as an amateur.

41. In response to the WTC's arguments, Mr. Carta suggests that it attributes too much importance to his previous suspension in 2005. He says that the suspension was the result of his use of a small amount of a localised spray on an injury to assist healing. He says that the spray could not have enhanced his performance during the cycling race in question.

42. With respect to the certificate produced by Dr. Mignano, he submits that the reference to sedation with a high dose of Benzodiazepine in the event that Mr. Carta could not be exempted from providing a blood sample was only obtained after his refusal to provide a sample on 5 October 2016 (the certificate is dated 20 October 2016). Mr. Carta says that if he had known about the possibility of sedation at the time the blood test was requested, he would have raised it at that so that he could provide a blood sample. He also says that it is surprising that this possibility was not suggested and adopted by the USADA sample collection officers at the time.

43. For its part, the WTC says that Mr. Carta was on notice that he was subject to IRONMAN's Anti-Doping Rules and that the WTC had clear authority to test Mr. Carta under those Rules. It says that blood testing is a valid, required component of the IRONMAN Anti-Doping Program and that Mr. Carta refused to provide a sample after having been advised of the consequences of not providing a sample.

44. In response to Mr. Carta's arguments, the WTC says that his alleged phobia of needles is not a compelling justification for refusing to provide a blood sample. It says that the doctor's certificate was obtained after the refusal to provide the blood sample. It also says that, from the doctors note, it is apparent that this was the first time Dr. Mignano saw Mr. Carta as a patient and that there are no further medical records to support Mr. Carta's statement that he has a needle

phobia. Further, the WTC says that the certificate in question does not state that Mr. Carta is unable to provide a blood sample. Rather, it states that if exemption from blood testing is not possible, Mr. Carta “should be sedated with a high dosage of Benzodiazepines.” The WTC says that Benzodiazepines are commonly prescribed medications for anxiety and are not prohibited by WADA.

45. The WTC says that Mr. Carta knew or should have known that he could be required to provide a blood sample at the Kona Championship. He knew that he had a phobia of needles and the responsibility was on him to seek legal advice concerning what steps he could take to permit him to provide a blood sample if he was called upon to do so. It submits that had Mr. Carta addressed his needle phobia in a responsible manner, he would have been able to provide a blood sample when requested. The WTC submits that Mr. Carta’s refusal to provide a blood sample is explained by either his own irresponsibility or because he had taken a prohibited substance that would have been detected by an analysis of his blood sample.

46. The WTC also says that Benzodiazepines are controlled substances which require a prescription from a doctor on a clinical evaluation of their patient. None of the USADA blood collection officers at the Kona event were doctors. In any event Mr. Carta was not their patient and it was not their responsibility to conduct a medical evaluation of Mr. Carta in order to provide him with an appropriate sedative.

47. The WTC also says that Mr. Carta is not an average amateur athlete. In light of his career as a professional and an elite level amateur athlete and the fact that he had also already suffered a 2-year ban because he was careless in following anti-doping rules, Mr. Carta should have known, or was very reckless in not knowing, that he was subject to the IRONMAN Anti-Doping Rules and could be required to provide a blood sample in advance of the 2016 IRONMAN World Championship. The WTC says that Mr. Carta should have known this at the time he signed the IRONMAN Anti-Doping Slot Waiver in June 2016. To the extent Mr. Carta claims that he did not understand what he was signing at the time, the WTC says that the word “anti-doping” appears throughout the Anti-Doping Slot Waiver. It says that it is inconceivable that in light of his history, Mr. Carta did not understand that he was signing an Anti-Doping Form and what that meant. Further, Mr. Carta had approximately 3 months between signing the Anti-Doping Slot Waiver and

leaving for the World Championship in Kona to obtain whatever translation he needed to understand his responsibilities under the IRONMAN Anti-Doping Rules. The WTC notes that the IRONMAN Competition Rules, translated into Italian, are readily available online.²⁰

48. The WTC also submits that an athlete cannot avoid blood testing by offering to submit a urine sample. It points to Dr. Rabin's Affidavit which makes it clear that blood sample collection is an important part of any Code-compliant anti-doping program since a number of important prohibited substances and methods can only be detected by blood testing. Granting an exemption from blood testing on the basis of a urine sample would leave a significant gap in the detection of certain prohibited substances by dopers claiming to have a needle phobia.

49. With respect to Mr. Carta's previous anti-doping violation in 2005, the WTC argues that the CAS panel which addressed the case found that Mr. Carta was negligent in using a spray containing the anabolic steroid Clostebol. It argues that particularly in light of this finding of a breach of the anti-doping rules, Mr. Carta should have known or was very reckless in not knowing that he was the subject of the IRONMAN's Anti-Doping Rules and that he could be required to provide a blood sample.

VI. ANALYSIS AND DECISION

50. This arbitration was commenced by way of an application by Mr. Carta pursuant to Article 8.1 of the IRONMAN Anti-Doping Rules (version 5.0, dated March 2015) and a WTC Hearing Protocol and Arbitration Rules for Anti-Doping Rule Violations under the IRONMAN Anti-Doping Program, which is Appendix 2 to the Rules. The procedural background is set out at section III above. That procedure was adopted after consultation with, and the agreement of, Mr. Carta and the WTC. No objection has been taken to my appointment or jurisdiction in this matter.

51. Having carefully reviewed the parties' submissions and all of the documentary evidence submitted, I have reached the conclusions set out below.

52. Pursuant to Article 5.2 of the Rules, the WTC had full authority to conduct the testing over all of the athletes competing in the 2006 World Championships, including to conduct blood testing.

²⁰ WTC's Rebuttal submission pp 2-3; Respondent's Exhibit 15.

I find Dr. Rabin's evidence outlined above regarding the need for blood tests and the appropriateness of conducting such test in respect of high endurance sports such as Triathlon, Road Cycling and Distance Running persuasive. I have also considered the evidence of Ms. Mittelstadt regarding the reasons for Mr. Carta's selection for an Out-of-Competition blood test and find it reasonable. I note that no objection was taken by Mr. Carta in respect of his selection for testing.

53. I have also carefully reviewed the procedure conducted by the USADA sample collection personnel of behalf of the WTC and Ms. Mittelstadt's conduct in handling Mr. Carta's refusal to provide a blood sample. I find both to have been reasonable and appropriate in all the circumstances. In this regard, I note that Mr. Carta was accompanied by his wife as his Athlete Representative and availed himself of the services of a translator. I accept that the procedure and consequences of a refusal to provide a blood sample were explained to Mr. Carta and that reasonable efforts were made to accommodate him in order to facilitate his providing a blood sample.

54. Mr. Carta was given a reasonable opportunity to consider his options and maintained his decision to refuse to provide a blood sample knowing the consequences. The Athlete Refusal Form was reviewed with Mr. Carta and each item on the form was translated for him. Both Mr. Carta and his wife acknowledged their understanding and signed the form. Mr. Carta also acknowledged his refusal in his email message of 28 October 2016 in response to the WTC's charge of anti-doping rule violation and notice of 22 October 2016. In his message, Mr. Carta acknowledged his refusal to provide a sample and explained that "[m]y neglect led me not to inform on standards for the race in question, ignoring the emails that were sent to me by the organisation IRONMAN much that I did not give notice on my PHOBIA to the Needles. For this I take full responsibility and sanctions...". He went on to take issue with the severity of the sanction applied in his case.

55. In these circumstances, the issue to be determined is whether there is any compelling justification for Mr. Carta to have refused to provide a blood sample. In this regard, Article 2 of the Rules lists anti-doping rule violations and Article 2.3 describes the anti-doping rule violation for refusing to submit to sample collection as follows:

Evading Sample collection, or without compelling justification, refusing or failing to submit to Sample collection after notification as authorized in these Anti-Doping Rules or other applicable anti-doping rules”.

[Comment to Article 2.3: For example, it would be an anti-doping rule violation of “evading Sample collection” if it were established that an Athlete was deliberately avoiding a Doping Control Official to evade notification or Testing. A violation of “failing to submit to Sample collection” may be based on either intentional or negligent conduct of the Athlete, while “evading” or “refusing” Sample collection contemplates intentional conduct by the Athlete”.]

56. In my view, Mr. Carta has not provided compelling justification for his refusal to provide a blood sample, as requested. In this regard, the evidence indicates that Mr. Carta had competed as a professional cyclist and at the elite triathlon level in the past. His anti-doping violation as a professional cyclist in 2005 should have alerted him to the possibility of anti-doping testing. In this regard, the CAS arbitrator found that Mr. Carta had been negligent in a number of ways in respect of his use of the healing agent he applied to his injury. In that regard, the arbitrator found that Mr. Carta had not advised his team doctor of the presence of the injury and did not consult with the doctor about the product he was prescribed. Further, he did not verify the contents of the product that he applied and noted that the first item on the list of ingredients set out on the packaging was Clostebol, an anabolic steroid. In her decision, the arbitrator noted that Mr. Carta indicated that he had previously undergone numerous anti-doping controls, which had proved to be negative, and that the violation in question was his first offences.²¹

57. In my view, Mr. Carta’s previous anti-doping rule violation is significant since it demonstrates his familiarity with anti-doping testing. In light of this violation and the decision of the CAS arbitrator, and his acknowledgement that he previously had undergone numerous anti-doping controls, he must have known that anti-doping testing at the 2016 World Championships was a possibility. The CAS arbitrator’s decision also demonstrates that Mr. Carta had taken a careless or negligent approach to the anti-doping rules. Although Mr. Carta’s anti-doping violation took place a number of years prior to the 2016 World Championships, it was nonetheless a significant event which resulted in a 2-year suspension. I am satisfied that Mr. Carta was or should

²¹ See the Decision in UCI v. Maurizio Carta & Polish Cycling Federation: CAS 2005-A-982 at ¶¶ 36-42. Respondent’s Exhibit 2. The arbitrator notes that Mr. Carta indicated that he had previously undergone numerous anti-doping controls, which had proved to be negative, and that the event in question was his first offence.

have been, aware of the possibility that he would be selected for anti-doping testing at the 2016 World Championships.²²

58. In addition, Mr. Carta signed the Anti-Doping Slot Waiver after the Austrian IRONMAN event on 26 June 2016. That document clearly refers to anti-doping rules and that as a condition of entering into any event, an Athlete may be placed into the IRONMAN Registered Testing Pool and is required to comply with its obligations. Further, the Anti-Doping Slot Waiver also refers to the competition rules which refer to the IRONMAN Anti-Doping Rules, including the Code at the WADA International Standards.²³ It appears that the IRONMAN competition Rules were available online in Italian.²⁴ Finally, Mr. Carta had ample time to obtain any translation he needed to understand his responsibilities under the IRONMAN Anti-Doping Rules.

59. Finally, while the Rules do not specifically identify which type of testing and samples may be required, a review of the rules indicates that the collection of blood samples is included in anti-doping testing. In this regard, the definition of “Sample” in the Rules includes “any biological material collected for the purpose of doping control” and the comment on this definition indicates that while it has sometimes been claimed that the collection of blood samples violates the tenets of certain religious or cultural groups, it has been determined that there is no basis for any such claim.²⁵

60. As a result, I find it unlikely that Mr. Carta was unaware of the terms of the Anti-Doping Slot Waiver and the IRONMAN Anti-Doping Rules and the possibility that he would be required to provide a Sample as part of anti-doping testing in the 2016 World Championships.

²² In reaching this conclusion, I have considered the provisions of Article 10.7 of the Rules which provide that for the purposes of determining whether an anti-doping rule violation amounts to a multiple anti-doping rule violation for the purpose of determining the appropriate length of suspension, each anti-doping violation must take place within the same 10-year. While Mr. Carta’s suspension in this case was reduced from 8-years to 4-years because his first anti-doping rule violation took place more than 10-years before his 2nd violation on 5 October 2016, this does not affect the relevance of the first anti-doping rule violation in determining whether there is a compelling justification for the 2nd violation.

²³ See Respondent’s Exhibit 15, Section 2.03, p.5.

²⁴ See Respondent’s Exhibit 15.

²⁵ See that IRONMAN Anti-Doping Rules, definition of “Sample or Specimen” at pp. 60-61. In addition, Article 6.2 of the Rules indicates that the purpose of analysis of samples is to detect Prohibited Substances and Prohibited Methods and to assist the WTC in profiling relevant parameters in an Athlete’s urine, blood or other matrix.

61. Mr. Carta has sought to justify his refusal to provide a blood sample on the basis that he had a phobia of needles. In my view, this does not provide a compelling justification. I note that the evidence of Mr. Carta's alleged phobia to needles is rather limited. It depends on his statement and the short certificate provided by Dr. Mignano on 20 October 2016. This certificate appears to reflect that Dr. Mignano saw Mr. Carta for the first time on 20 October 2016. It states that Mr. Carta "...is affected by Disorders caused by Panic Attacks and situational phobia linked to use of needles. For this reason, he should be exonerated from hematic exams. If this is impossible, the patient should be sedated with a high dosage of Benzodiazepine".²⁶ As the WTC notes in its brief, the certificate does not state that Mr. Carta is unable to provide a blood sample because of his needle phobia. Rather, it states that if exoneration from blood testing is not possible, Mr. Carta should be sedated.

62. Assuming that Mr. Carta's does, indeed, suffer from a phobia of needles, it was his responsibility to address this phobia in advance of the World Championships. In my view, he knew, or ought to have known, that he could be selected for Anti-Doping Testing and required to produce a blood sample. I find that in not making enquiries and seeking advice in advance as to what steps he could take to address his fear of needles so as to be able to provide a blood sample, Mr. Carta was negligent.

63. Accordingly, I am unable to find that Mr. Carta has proved a "compelling" justification for refusing to provide a blood sample.

64. In reaching this conclusion, I have considered Mr. Carta's argument that he was competing as an amateur athlete in the 40-44-year age group and therefore had no reason to engage in doping or to refuse to provide a blood sample. However, Ms. Mittelstadt's evidence contradicts this point: age-group amateur athletes represent 99% of IRONMAN Competition participants. Further, since 2011, IRONMAN has charged 17 athletes with anti-doping rule violations, 6 of which were professionals and 11 of which were age-group athletes.²⁷

²⁶ See Dr. Mignano's certificate attached to Mr. Carta's application for arbitration and the English translation at Respondent's Exhibit 21.

²⁷ Mittelstadt Affidavit ¶¶ 14 -19. Ms. Mittelstadt notes that IRONMAN has conducted targeted age-group testing since the inception of IRONMAN's testing program in 2005. According to Ms. Mittelstadt, in 2015, IRONMAN expanded age group testing to include In-Competition testing, in part in response to the demands of the athletes.

65. I have also considered Mr. Carta's argument that he offered to provide a urine sample and that this demonstrated his good faith. In my view, this is not persuasive. As pointed out by Dr. Rabin, there are a number of prohibited substances and methods which can only be detected in blood. It is for that reason that blood testing is included as part of anti-doping. Further, Dr. Rabin maintains that exemptions from submitting to blood testing cannot be envisaged as this would not only lower the efficiency of any anti-doping program but would also jeopardise the key principle of equal treatment of athletes.²⁸

66. Accordingly, I am not persuaded that Mr. Carta has provided a compelling justification pursuant to Article 2.3 of the Rules for his refusal to provide a blood sample.

67. In the alternative, Mr. Carta argues that his sanction should be reduced to a 2-year suspension.

68. Pursuant to Article 10.3.1 of the Rules, the period of ineligibility for a violation of Article 2.3 (refusal to submit to sample collection) shall be 4 years unless the athlete can establish that the violation was not intentional. Article 10.3.1 provides as follows:

For violations of Article 2.3 or Article 2.5, the period of *Ineligibility* shall be four years unless, in the case of failing to submit to Sample collection, the Athlete can establish that the commission of the anti-doping rule violation was not intentional (as defined in Article 10.2.3), in which case the period of *Ineligibility* shall be two years.

69. Article 10.2.3 defines the term "intentional" as follows:

As used in Articles 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*.

²⁸ See Dr. Rabin's Affidavit, Respondent's Exhibit 18 ¶¶ 7-8, 14. Dr. Rabin also notes that WADA has emphasised the importance of blood testing particularly for high endurance sports like triathlon, through public statements and in its technical document (TD 2014 SSA, Appendix 1).

An anti-doping rule violation resulting from *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.

70. In the circumstances described above, Mr. Carta's refusal to produce a blood sample was clearly "intentional". After discussion of his options and an explanation of the consequences he faced if he refused to provide a sample, Mr. Carta signed an Athlete Refusal Form. I am satisfied that Mr. Carta understood his options and made a conscious, intentional decision to refuse to provide a sample.

71. Further, for the reasons set out above, I have found that there was no compelling justification for Mr. Carta to refuse to provide a sample.

72. I have considered the explanation of "intentional" in Article 10.2.3 as meaning to identify athletes who cheat. The Article goes on to state that the term requires that the athlete engaged in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute a result in an anti-doping rule violation and manifestly disregarded that risk. In this case, since Mr. Carta refused to provide a sample and, therefore, it will never be known whether he engaged in doping and whether he knew that or knew that there was a significant risk that he had engaged in doping by use of a prohibited substance or prohibited method and manifestly disregarded that risk. However, it is clear that Mr. Carta was negligent in not taking steps to address his alleged phobia of needles in advance of the 2016 World Triathlon Championships so as to be able to provide a blood sample if required. He then knowingly or intentionally refused to provide a sample when requested to do so. Mr. Carta knew that this refusal constituted an anti-doping rule violation, or, at the very least, knew that there was a significant risk that his conduct might constitute an anti-doping rule violation and he manifestly disregarded that risk. As a result, I am unable to find any basis for reducing the suspension of 4 years to a lesser suspension of 2 years pursuant to Article 10.3.1 of the Rules.

VII. COSTS

73. Having considered the circumstances of this case and the resources of the parties, I find it appropriate to make no award as to costs. Accordingly, each party shall bear its own costs in these proceedings.

VIII. CONCLUSION AND AWARD

74. For all the reasons set out above, I make the following award:

- (i) Mr. Carta's appeal from the WTC's Charge of Anti-Doping Rule Violation and Notice of Sanction under the IRONMAN Anti-Doping Rules, dated February 23, 2017 is dismissed;
- (ii) the Suspension and Sanction set out in the Charge of Anti-Doping Rule Violation and Notice of Sanction remain in place;
- (iii) each Party shall bear its own costs; and,
- (iv) all other or further claims are dismissed.

Dated at Vancouver, British Columbia, Canada this 26th day of June, 2017


Henri C. Alvarez, QC
Arbitrator