



**I Tested Positive?**  
***How to Respond to a Possible Anti-doping Violation***  
Quick Reference Guide

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## **I Tested Positive? How to Respond to a Possible Anti-doping Violation**

### Quick Reference Guide

This document summarizes: "*I Tested Positive? How to Respond to a Possible Anti-Doping Violation*". Readers are encouraged to consult that document and the CADP.

The following article is designed to assist athletes understand the series of events that generally occur when an alleged anti-doping violation has occurred and the options available.

The Program Managers at the Sport Solution are available to confidentially discuss any anti-doping question or violation, at any time. Preparation is the key to a strong case.

#### **Part I: Alleged Violation:**

##### **A) Preliminary Review (after an adverse analytical finding):**

- CCES will see if there is a TUE (Therapeutic Use Exemption) or medical review
- CCES will see if there was a procedural flaw in the lab analysis
- CCES will give the athlete the opportunity to provide an explanation

Once this initial review is completed, CCES will decide whether or not to issue formal notice claiming that a violation has occurred (Rule 7.66)

##### **B) Athlete Notification (Pre-Hearing):**

- CCES will provide formal notice to the athlete
- Athlete must respond to this notice. Ignoring this notice can have serious consequences
- Parties Involved:
  - Athlete, CCES, NSO
  - Entitled to observe: International Federation, Government of Canada, WADA

##### **C) Possible Athlete Responses to Formal Notice:**

- Cooperation: athletes should fully cooperate with the CCES investigation
  - Note: any information provided by the athletes can be used in the hearing
- "B" Sample: a time period exists whereby athletes can request this sample to be tested
- Accept violation and waive hearing: suspension starts immediately.
- Voluntarily Admit: if the athlete promptly admits an anti-doping violation, the suspension can start earlier. The athlete retains the right to a hearing.
  - It is advised to consult independent legal advice before voluntary admission
- Voluntary Suspension: if the athlete accepts a voluntary provisional suspension, thus being barred temporarily from competition prior to a final decision at a hearing, the period will be credited toward the ultimate decision

- Contesting a Claim:
  - Retain a lawyer to assist in the hearing process
  - Understand the CADP rules alleged to be violated
  - Gather all information and documents related to violation, including lab documentation

## **Part II: Challenging an Alleged Violation:**

If the athlete chooses to challenge an alleged violation he or she needs to establish why the Sample came back positive and/or if procedures were followed properly. There are two key points:

- 1) Were the procedures required by the Doping Control Rules in the CADP followed by CCES?
- 2) If not, were the deviations from the procedures the cause of the positive test result?

Rules that Apply:

- CCES Jurisdiction: CCES only has jurisdiction where the CADP applies
- Testing Pool: different testing pools set out different obligations, (i.e. RTP, DTP)
- Notification and Supervision: CCES must follow rules 6.30-6.39.
- Sample Collection: the rules for the sample collection session are 6.40-6.62.
  - Actual sample collection procedures are provided under Annexes 6C-6F.
  - Disability Adjustments: the sample collection procedure is modified by Annex 6B.
- Storing, Location, Transport, and Custody: must follow rules 6.65-6.78.
- Departure from Doping Control Rules: deviations that did not cause the adverse analytical finding will not eliminate the doping infraction.
  - If successful in showing that a departure from the rules could have reasonably caused the adverse analytical finding, then CCES has the burden of proving that it did NOT.

## **Part III Was a Lab Rule Broken?**

CCES uses a WADA-accredited lab. The CADP presumes that the lab rules will be followed properly. If the athlete wishes to dispute the presumption he or she must provide specific evidence proving otherwise.

## **Part IV: Hearing Preparation – Things to Know:**

Two issues can be contested at a hearing: 1) facts of the alleged violation, 2) the proposed sanction

A) Therapeutic Use Exceptions (TUEs) and Medical Reviews:

- Elite Athletes (Rule 5.2) must obtain a TUE prior to the use of a prohibited substance
- If a TUE has been granted then the anti-doping violation will be eliminated.

- Medical emergencies or exceptional circumstances could result in retroactive TUE approval.
- All other athletes can undergo a medical review process if there is an Adverse Analytical Finding (it will be granted if the conditions set out in rule 5.5 are met).

B) Strict Liability:

- The mere presence of a prohibited substance in a bodily sample is an anti-doping violation.
- This ruling is firm regardless of intent, fault, carelessness...etc. Excuses are not of substance.
- Minor exceptions:
  - Substances with a minimum quantity threshold and the athlete is below it
  - Substances that can be produced naturally by the body.

C) Specified Substances:

- Consumption of “specified substances” may lead to an unintentional anti-doping violation
  - These substances can be found in common medicinal products
- If the athlete is able to show that the use of the substance was not intended to enhance performance then the sanction can be reduced or even eliminated.
- Elements to prove that can reduce or eliminate the sanction:
  - 1) How the substance entered the body
  - 2) Intention of consuming the substance,
  - 3) Supplementary evidence to support the case
- Ultimately, CCES will decide the athlete’s “degree of fault” and make a decision

D) Exceptional Circumstances – Four Opportunities to Reduce (Not Eliminate) a Sanction:

- 1) No Fault: the athlete must prove that he or she did not know, and could not have known even with the most caution, that he or she had used the prohibited substance
  - Difficult test to satisfy, but doing so will eliminate the sanction entirely
- 2) No Significant Fault: the athlete must prove that his or her fault was not significant in relationship to the violation when considering all of the circumstances
  - The athlete must prove that other factors and circumstances played a significant role in causing the violation, which can reduce the sanction by half
- 3) Assisting CCES Discover Anti-Doping Violations in other Athletes:
  - If an athlete substantially assists CCES confirm a violation in another athlete, the sanction against the athlete can be reduced
- 4) Admitting Violation in Absence of Other Evidence:
  - If an athlete voluntarily admits to breaking an anti-doping rule before receiving a sample collection notice, the sanction can be reduced by half

E) Aggravated Circumstances which can Increase the Sanction Period:

- The athlete may be faced with an increased sanction due to aggravated circumstances.

- This increased penalty can usually be avoided if the athlete admits the violation promptly after being confronted by CCES

F) Burden of Proof:

- At a hearing, CCES has the burden of proving to a tribunal that an anti-doping violation occurred
- However, sometimes the burden is on the athlete. Such is the case in “Exceptional circumstances” scenarios.

**Part V: Conduct of the Hearing**

- Hearing procedures are set out in detail in the CADP and SDRCC Code
- At a hearing there will be a single arbitrator who will determine whether there was an anti-doping rule violation and subsequently administer the consequences.
- The athlete must present evidence to prove a certain fact, and should be aware of the different types of evidence and strategies to consider when preparing for a hearing

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