



Brendan O'Sullivan
Note on Specified Sanctions Procedure

1. Specified Sanctions

- 1.1 Article 7.6.4 of the Irish Anti-Doping Rules provides that if an athlete admits an anti-doping rule violation and accedes to the sanctions specified by Sport Ireland, there is no hearing and Sport Ireland issues a reasoned decision. The process which leads to Sport Ireland specifying a sanction is called the 'specified sanctions procedure'.
- 1.2 This consultation procedure allows athletes to establish a basis for ameliorating or reducing the sanction which may otherwise be applicable.
- 1.3 At the end of the process, Sport Ireland specifies the sanction it believes to be appropriate in the case. The athlete then has the choice of accepting that sanction or electing to have the sanction determined by the Irish Sport Anti-Doping Disciplinary Panel ("Disciplinary Panel) or in this case the GAA Anti-Doping Hearings Committee.

2. Case of Brendan O'Sullivan

- 2.1 Mr O'Sullivan was tested on 24 April 2016. Sport Ireland was informed of the positive test by the Cologne laboratory on 6th May. Mr O'Sullivan was notified on 12 May and provisionally suspended.
- 2.2 On 27 May his solicitors requested that the B Sample be analysed. The A and B sample laboratory documentation packages were also requested. The B Sample analysis took place on 17 June and confirmed the result of the A Sample analysis. On 11 July the solicitors for Mr O'Sullivan confirmed that he now formally admitted the anti-doping rule violation and wished to enter into specified sanctions process with Sport Ireland.
- 2.3 On 21 July a meeting took place between Mr O'Sullivan and his solicitor and the solicitor for Sport Ireland. At the meeting Mr O'Sullivan raised the possibility of a contaminated product. He produced a tub of 'Falcon Labs Oxyburn Pro Superthermotech' which he said was the source of the positive test¹. The ingredients listed on the label of the supplement did not list MHA (or any synonym for MHA). He also produced a report from a laboratory indicating the presence

¹ On 21 July, following the meeting, Mr O'Sullivan appealed his provisional suspension to the Chair of the Disciplinary Panel pursuant to Article 7.8.3.3 of the Rules on the basis that the violation was "*likely to have involved a Contaminated Product*". The provisional suspension was lifted by the Chair of the Disciplinary Panel on 28 July 2016.

of MHA in supplements which Mr O'Sullivan's solicitor had sent for testing.

2.4 The case Mr O'Sullivan was making required him to establish:

- i. That the MHA entered his system from the supplement in question;
- ii. That MHA was not disclosed on the supplement label or in information available in a reasonable internet search; and
- iii. That he bears No Significant Fault or Negligence.

Each of these are addressed in further detail below.

2.5 Sport Ireland's solicitors sought to clarify certain matters with the solicitors for Mr O'Sullivan in August and September 2016 regarding the internet searches he had carried out. Sport Ireland also requested an unopened tub of the supplement in question be purchased.

2.6 Tablets from the unopened tub and loose tablets (which Mr O'Sullivan indicated were left over from the original tub) were transported to the Cologne laboratory and received on 5 October 2016.

2.7 In November 2016, Mr O'Sullivan's solicitors were asked to address further queries regarding the internet search carried out by Mr O'Sullivan. This culminated in Mr O'Sullivan swearing statutory declaration in December 2016.

3. Supplement

3.1 Sport Ireland needed to be satisfied that Mr O'Sullivan took 'Falcon Labs Oxyburn Pro Superthermothech' and that this resulted in the positive test. It would have been remiss of Sport Ireland not to test the evidence in this regard.

3.2 In relation to cases of alleged inadvertent ingestion (including contaminated product cases such as this one) the Athlete has to declare his supplement regimen (dose, duration, when he last took it before being tested) and has to show that an unopened package of the supplement with the same batch number and expiry date as the supplement used contains the Prohibited Substance in question. All of this information is analysed to ensure it is consistent with the urinary concentration of the Prohibited Substance and its metabolites detected in the athlete's sample.

3.3 On 2 November 2016, Dr Hans Geyer from the Cologne laboratory confirmed that the level of MHA found in Mr O'Sullivan's sample was consistent with Mr O'Sullivan taking one tablet of 'Falcon Labs Oxyburn Pro Superthermotech' at half-time before the test.

4. Contaminated Product

- 4.1 MHA was not listed on the supplement label. The issue which required consideration was whether it was disclosed on a reasonable internet search.
- 4.2 The research from Sport Ireland indicated that there appeared to be 2 versions of 'Falcon Labs Oxyburn Pro Superthermotech' available, one of which listed MHA as an ingredient. The other, which was taken by Mr O'Sullivan in this case, did not list MHA as an ingredient.
- 4.3 Both versions were available on the internet and there were a number of websites which indicated 'Falcon Labs Oxyburn Pro Superthermotech' did contain MHA.
- 4.4 Mr O'Sullivan provided evidence of the internet searches he carried out and while not exhaustive, in circumstances where the tub purchased by Mr O'Sullivan did not list MHA as an ingredient and his internet searches appeared to confirm that this was the case, Sport Ireland was satisfied that he had carried out a reasonable internet search.

5. No Significant Fault or Negligence

- 5.1 Mr O'Sullivan provided evidence that he searched the name of the product and the ingredients listed on the label.
- 5.2 Sport Ireland accepted that despite the nutrition advice available to him, the evidence of the research he had carried out was sufficient to establish No Significant Fault or Negligence.

6. Sanction Specified by Sport Ireland in December 2016

- 6.1 Following receipt of all of the information from Mr O'Sullivan, Sport Ireland conducted its internal review process to reach a view on the appropriate sanction. Sport Ireland accepted (i) that the MHA entered Mr O'Sullivan's system from the supplement in question, (ii) that MHA was not disclosed on the supplement label or in information available in a reasonable internet search and (iii) that he bore No Significant Fault or Negligence.
- 6.2 This meant that the range of sanction was 0-2 years depending on Mr O'Sullivan's degree of fault. Although Sport Ireland accepted that Mr O'Sullivan had carried out a reasonable internet search, it was clear that he did have a degree of fault:
 - 6.2.1 He departed from the supplement regime provide by the Kerry team / management and did so without consulting any of the Kerry management or indeed anyone else with relevant expertise;
 - 6.2.2 'Falcons Labs Oxyburn Pro Superthermotech' doesn't sound like a caffeine supplement and

he should have been naturally skeptical of such a supplement.

- 6.2.3 The risks associated with sport supplements are well-known. Sport Ireland's website² recommends against the use of supplements and says that there is no guarantee that supplements are safe. He did not consult the Informed Sport website.
- 6.3 On 21 December 2016, Sport Ireland's solicitors wrote to Mr O'Sullivan's solicitor and advised that Sport Ireland believed the appropriate sanction in the case to be 7 months. On 22 December 2016 Mr O'Sullivan's solicitors indicated that he did not accept the sanction and wanted it to be determined by the GAA Anti-Doping Hearings Committee.
- 6.4 Both the GAA Anti-Doping Hearings Committee and the Disciplinary Panel, on appeal, accepted the matters set out at paragraph 6.1 and both hearings related to the appropriate length of the sanction to be imposed.

² Sport Ireland's website says:

"You MUST undertake thorough internet research of any supplement products before it is consumed. This search should include the name of the product and the ingredients/substances listed. Information revealed as a result should be further investigated and we advise athletes to keep evidence of their research. Screen shots should be taken and the results saved in a folder. All saved information should be backed up. [Informed sport](#) is a risk minimisation tool that can be used to access supplements that have been batch tested."