

BRIEF SUMMARY OF AUGUST 5 ARTICLE IX PROCEDURE

As you know, since Jessica Hardy's positive drug test became public, Tara Kirk has been demanding that she be placed on the Olympic Team and be given the opportunity to swim the 100m breaststroke in Beijing.. This came to a head when she filed a Demand for Arbitration with the American Arbitration Association on Monday morning August 4, claiming that USA Swimming's refusal to put her on the team was a violation of the Ted Stevens Olympic and Amateur Sports Act. She also filed claims seeking monetary damages, costs and attorneys fees from USA Swimming, as well as an order that USA Swimming's Selection Procedures be changed in the future.

Her arbitration demand requested an expedited hearing on her request to be named to the Olympic Team (while her other claims may be addressed at a later date). Under the USOC Bylaws, she was entitled to a hearing and decision within 48 hours. By Monday afternoon, an arbitrator (Al Ferris of San Diego) had been appointed by the AAA, and a hearing was scheduled for Tuesday, August 5 beginning at noon Pacific Time in San Francisco. The hearing lasted approximately 10 ½ hours. Mark Schubert, USADA's General Counsel Bill Bock and I all testified on USA Swimming's behalf. The USOC submitted an affidavit from Rachel Isaacs, Associate Director in the Sport Partnerships Department, expressing her opinion that the Selection Procedures were clear, fair, and equitable. Tara Kirk was present at the hearing but did not testify. We were represented at the hearing by Rich Young and Steve Smith of HRO. USOC Athlete Ombudsman John Ruger monitored the entire hearing by phone.

Under our Selection Procedures, Rebecca Soni had been named to replace Jessica Hardy in the 100m breaststroke in Beijing. Because Ms. Kirk was requesting that USA Swimming be ordered to put her in that event in Rebecca's place, Ms. Soni was represented at the hearing as an interested party by her own counsel.

As the hearing was held so close to the start of the Olympics, the arbitrator announced his decision verbally at the conclusion of the hearing, with a written order to be issued by September 5. In that verbal order, the arbitrator denied Ms. Kirk's claims, and found that USA Swimming had reasonably followed its Selection Procedures and had reasonably denied Ms. Kirk's demand that she be added to the Olympic Team.

USA Swimming's position all along in this matter has been that we are required to follow our published rules, and that is what we did. Hopefully this decision, after a long and detailed hearing on the facts, will satisfy those who publicly and privately have expressed concern.

Chuck Wielgus
Executive Director
August 6, 2008