

Update on Drug Testing Developments¹

Collective Bargaining Agreements reached between owners and athletes implement various policies for drug regulation specific to each sport. The arbitration practices, testing strategies, disciplinary actions and transgressions are different depending on an athlete's association with a particular sport. Players' unions and owners work together to develop policies that protect player's fourth amendment rights to privacy while ensuring the integrity of the sport by banning harmful substances, including performance enhancing drugs.

The National Football League's collective bargaining agreement established an Intervention Program involving testing, treatment and discipline of the player. Any player who signs the collective bargaining agreement is subjected to preseason recreational drug testing during the months of April and August and beginning in the 2011 season, human growth hormone testing will randomly take place throughout the season. The Major League Baseball Association's collective bargaining agreement requires every player to submit to an annual drug test; additionally randomly selected players can be required to submit to drug testing throughout the season. Players also agree upon unannounced testing if the club has reason to believe the individual is in violation of the league's drug policy. Similar to the NFL and MLB, the National Basketball Association has an anti-drug and treatment program geared at either the rehabilitation of players with drug problems or their disqualification.

In order to determine a reasonable cause for unannounced testing, medical and legal experts associated with both the specific club and the commissioner's officials jointly must reach an agreement to decide if the player has violated the terms of the collective bargaining agreement. Each sport has different procedures in order to reach a valid conclusion. The MLB uses the Health Policy Advisory Committee, which consists of doctors and lawyers designated to represent the clubs and league. Comparatively, the NFL also designates medical professionals representative of the club and commissioner's office, but the Office of the Commissioner has the arbitrary powers and disciplinary discretion. The NBA reaches a joint conclusion between the players association and the commissioner's office to determine a reliable "Independent Expert" responsible for administering testing.

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The different sports have different outlets to administer disciplinary actions and appeals. The NFL, MLB and NBA all offer treatment programs to promote healthy lifestyles for players, but suspensions and fines vary. In the NBA if a player is found abusing certain drugs, this action can be grounds for automatic dismissal. During the 2006 NBA season, Chris Andersen of the New Orleans Hornets was dismissed and disqualified after violating the leagues "drug of abuse policy." Andersen and the player's union filed a grievance against the commissioner ("Hornets' Andersen kicked," 2006). The grievance arbitrator upheld the commissioner's decision and Andersen was disqualified for two years. In 2008 he was reinstated (Burns , 2008). Andersen was the first player to be disqualified since 1999. In the MLB, fourth time offenders are subject to a year suspension without pay.

Performance Enhancing Drugs also constitute a violation of the drug policies as stated in the collective bargaining agreements of various leagues. The MLB began banning steroid use in 2004 after five to seven percent of the league tested positive for steroid use (Bodley , 2005). The current policy allows for randomized testing once a year, including the off-season, to determine if a player has violated the terms of the agreement. During the 2008 NFL season, Kevin Williams of the Minnesota Vikings tested positive, violating the substance abuse policy. Williams took an over the counter diuretic known as "StarCaps" in order to lose weight to comply with the weight clause within his contract. Williams did not realize "StarCaps" contained bumetanide, an ingredient that can mask the use of steroids but was not on the label (Hawkins, 2010; Zulgad, 2008). Williams sued the NFL for failing to notify him of the results of the test and for breaching confidentiality according to Minnesota law. Dr. John Lombardo, the NFL drug administrator did not inform Williams that the product contained illegal substances (Zulgad, 2008). The NFL contended that they were in accordance to state law and by signing the contract, players are held to strict liability to know which ingredients in substances constitute a violation of steroid use policy.

Laws enacted in order to try to deter drug use can be both effective and also harmful to the reputation of a club. Club owners do not want to intentionally prosecute their players for violations of their policies because not only does it hinder the performance of their team, but also morally drugs represent an unhealthy lifestyle and a fraudulent way to promote competition. Therefore a system requiring the participation of the league officials and club franchises is needed in order to ensure the enforcement of the collective bargaining agreements. Players in

the contractual agreements are granted the rights to privacy unless suspected of violating the terms. It then becomes the leagues obligation to follow procedures to determine the results. In many cases, by the time the test are able to be administered, the drugs are already out of an individual's system. It becomes players' responsibilities to know which drugs are in violation of agreements, otherwise specifying what can and cannot be used makes drug administrators accountable. State laws can vary depending on their policies in regards to drug testing. Therefore questions arise if a uniform federal policy would ensure fairness? Would enacting a uniform sports industry policy for drug use allow for all athletes to be held to an equal standard of competition and healthy living? The International Olympic Committee began testing for performance enhancing drugs in 1968, testing over 40 athletes. Their ardent approach has rescinded gold medals from winners like Ben Johnson for their abuse of performance enhancing drugs ("Drugs and Testing"). Even if continuity within the sports industry is never reached, drugs in the sports industry will always be a problem unless leagues and unions proactively enforce the policies implemented in their collective bargaining agreements.

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