

## SANCTIONS UNDER THE WORLD ANTI-DOPING CODE

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The World Anti-Doping Agency is a private foundation constituted pursuant to the laws of Switzerland, and operating under a Constitution within the Swiss legal system. It is rather unique in its global composition with half its "stakeholders" being the Governments or public authorities of the world, and the other half coming from the Olympic Movement or private international sporting bodies. Formed following a World Conference convened by the International Olympic Committee in February 1999 in Lausanne, it presently is headquartered in Montreal, Canada, with a Foundation Board of 36 members, and an Executive Committee of 10 members.

One of the first tasks entrusted to WADA was that of preparing a universal Code on Anti-Doping, with the aim of harmonizing the multi-varied rules and laws then in effect around the world, and ensuring, in particular, that athletes are treated in the same way by sport and governments in anti-doping issues.

This task was responded to positively, and with a degree of urgency. Following extensive consultation and considerable drafting exercises, the World Anti-Doping Code was adopted unanimously by the World Conference held in Copenhagen in March 2003. Formal acceptance has now been undertaken by 87 countries and almost all International Federations. Implementation is now taking place with various changes and amendments to rules, regulations and laws.

WADA has now completed the second stage of the World Anti-Doping Program, by introducing four Mandatory International Standards:

- (a) The Prohibited List to come into effect as of 1 January 2004 (and replace the previous IOC/WADA list of 1 January 2003);
- (b) the International Standard for Laboratories;
- (c) the International Standard for Testing;
- (d) the International Standard for Therapeutic Use Exemptions.

Along with the Sporting Movement, Governments are proceeding towards implementation of the Code through the development of an international treaty, and UNESCO has undertaken the task of drafting this convention which will be completed and available for ratification, it is hoped, by October 2005. The first meeting of the Drafting Committee is presently being held in Paris.

There are, of course, many legal issues resulting from the Code and the implementation processes. Lawyers are presently engaged, throughout the world, in drafting new or amended regulations, rules and statutes. WADA is assisting in guiding those involved and, with appropriate consultation and help from stakeholders, developing models of best practice.

## **Sanctions**

At present there is some discussion of one particular aspect of the Code, namely sanctions, which merits some detailed explanation or clarification, and I would like to take the opportunity given at this Conference to fully present the various alternatives available to Tribunals once anti-doping violations have been proven.

Under the Code, the results management and hearing process of anti-doping violations shall be the responsibility of and governed by the procedural rules of the anti-doping organization which initiated and conducted sample collections. Therefore, for example, each international federation will remain responsible for the adjudication process for all the tests it has conducted both in and out of competition. Each case is to be looked at individually, and the athlete or athlete support person given the opportunity of establishing a basis for eliminating or reducing the sanction.

The sanctions in the Code range from a warning to a life ban depending on various matters including:

- a) The type of the Anti-Doping Violation
- b) The circumstances of the individual case (level or absence of fault or negligence)
- c) The substance (or quantity found for certain substances) in case of the detection of a prohibited substance
- d) Repetition of an anti-doping violation (recidivism)

### *a) Type of Anti-Doping Violations*

The Code provides for different sanctions depending upon the type of violation that has occurred. The Code foresees three types of violations:

- (i) Violations relating to the **presence** of a prohibited substance and/or its **use; refusing or failing** to submit to sample collection; **tampering** with doping control, for

which sanctions range from a warning to a life ban depending on the substance, the circumstances of the case, the repetition of the anti-doping violation.

- (ii) Violations relating to the **failure to provide** whereabouts information and **missed tests** by athletes responsible to submit to appropriate out-of-competition testing, for which the sanctions range from a minimum of 3 months up to a maximum of 2 years. In accordance with the rule, International Federations will have some discretion in determining when a failure to provide whereabouts information or a missed test occurred. Also, for repeat violations, the sanctions will depend on the rules of the anti-doping organizations.
- (iii) Violations relating to **administration** and **trafficking** of prohibited substances for which sanctions will range from a minimum of 4 years up to a lifetime ban.

If there are multiple anti-doping violations at the same time by the same person, then that person shall be seen as having committed one doping violation but the sanction to be imposed will be based on the violation that carries the most severe penalty.

For example:

- Where an athlete has been found to have both a specified substance and a steroid in a sample, the sanction will be based on the presence of a steroid.
- Where the athlete has used a prohibited substance but is also involved in trafficking and administration to other athletes, the sanction relating to trafficking will be imposed.

*b) The circumstances of the individual case*

The Code has provisions for the consideration of individual circumstances. **This has been known by some as individual case management**, and every case, of course, should be dealt with individually by a Tribunal. However there are boundaries within which the hearing panel can use its discretion to adapt the sanction to the circumstances of the violation. Three situations have been foreseen in the Code:

- (i) No Fault or Negligence: To succeed under this heading, the *Athlete* must establish that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that

he or she had *Used* or been administered the Prohibited Substance or Prohibited Method.

When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Specimen*, which is an anti-doping violation, the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the Tribunal consider that the period of *Ineligibility* be fully eliminated.

In the event this clause is applied by a Tribunal following proper proof of the aspects described, and the period of *Ineligibility* otherwise applicable is eliminated, the anti-doping rule violation shall also not be considered a violation for the limited purpose of determining any period of *Ineligibility* for multiple violations under Articles 10.2, 10.3 and 10.6.

- (ii) No Significant Fault or Negligence: To succeed under this heading, the *Athlete* must establish to the requisite standard of proof that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault or Negligence*, was not significant in relationship to the anti-doping rule violation.

If an *Athlete* does establish in an individual case that he or she bears *No Significant Fault or Negligence*, then the period of *Ineligibility* may be reduced by a Tribunal, but the reduced period of *Ineligibility* may not be less than one-half of the minimum period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this section may be no less than 8 years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Specimen*, which is an anti-doping violation, the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the Tribunal consider that the period of *Ineligibility* be reduced.

- (iii) Athlete's Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations by Athlete Support Personnel and Others: A Tribunal may also consider the reduction of the period of *Ineligibility* in an individual case where the *Athlete* has provided substantial assistance to the *Anti-Doping Organization* and where that assistance results in the *Anti-Doping Organization* discovering or establishing an anti-doping rule violation

by another *Person* involving *Possession, Trafficking, or Administration to an Athlete*. The reduced period of *Ineligibility* may not, however, be less than one-half of the minimum period of *Ineligibility* otherwise applicable. Again if the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this section may be no less than 8 years.

c) *Specified Substances*

The Code also addresses violations involving certain Specified Substances (contained in Part Two: The 2004 Prohibited List). These are substances which are particularly susceptible to unintentional anti-doping rule violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents. Where an Athlete can establish, again according to the relevant standard of proof, that the Use of such a specified substance was not intended to enhance sport performance, the period of Ineligibility will be reduced within the boundaries defined in the Code.

For the Prohibited List effective from the 1<sup>st</sup> January 2004 these substances are:

- (i) Stimulants: ephedrine, L-methylamphetamine, methylephedrine.
- (ii) Cannabinoids.
- (iii) Inhaled Beta-2 Agonists (except clenbuterol).
- (iv) Diuretics (except for sports where weight loss can enhance performance, see current list for details)
- (v) Masking Agents: probenecid.
- (vi) Beta Blockers (for the sports where beta-blockers are prohibited)
- (vii) Alcohol (for the sports where beta-blockers are prohibited)

d) *Repetition of a violation*

For recidivism or repetition of violations the Code sets out longer sanctions. If the first case was a minor violation, the 2<sup>nd</sup> offense will attract a lesser sanction than if the first case were a doping violation with a possible 2 year sanction.

e) *Decision flow*

Enclosed are 4 charts that explain the decision flow in cases involving presence and use of substances and also apply to

refusing, failing to submit to a doping control or tampering with a doping control.

Chart 1 explains the flow that takes place for all such cases and is the starting page

Chart 2 explains the flow that takes place for a first violation

Chart 3 explains the flow that takes place for a second violation

Chart 4 explains the flow that takes place for a third violation.

This document is a tool to explain the sanctioning process in the Code. Not all possible variations are covered by this document and it in no way replaces the actual text of the Code.

## **Appendix**

Pdf files:

- Decision flow charts
- Articles 2, 10 and 11 of the World Anti-Doping Code

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— *Note: The complete World Anti-Doping Code can be downloaded from WADA's website at [www.wada-ama.org](http://www.wada-ama.org) (under the Standards and Harmonization group)*