

Anti-Doping Awareness in Sports

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Lecture -29

Sanctions for Repeat Violations

Good morning ladies and gentlemen and welcome back to Week Six of the course on Anti-Doping Awareness for Sports. This is Lecture Four. I am Colonel Dr. Anup Krishnan, and today we will be talking about sanctions for repeat violations.

Now we have talked about the sanctions under the WADA Code. We have talked about what happens if there is a first ADRV, and we have talked about the sanctions and the periods of ineligibility, etc. There were several caveats to that, which we have tried to cover in the last lecture. This lecture we will be speaking about sanctions for repeat violations. I'll be covering this topic as per the following outline.

Introduction; Second ADRV; Third ADRV, Contaminated products, Prohibited association, Substantial assistance, Physician's fault, And as always, we'll conclude with a take-home message.

Multiple violations are defined as per the WADA Code and dealt with under Article 10.9 of the WADA Code. If there is a second ADRV, invariably, it is a lifetime ban. What we are discussing are some rare circumstances in which the lifetime ban is not applicable, but some other ban periods are applicable. So if there is a second ADRV, it may be a six-month period of ineligibility or a period of ineligibility in the range between the sum of the period of ineligibility imposed for the first ADRV plus the period of ineligibility applicable to the second ADRV if it were treated as a first violation, and twice the period of ineligibility otherwise applicable to the second ADRV treated as if it were a first violation.

The period of ineligibility within this range shall be determined entirely based on the circumstances and the athlete's or other person's degree of fault with respect to the second violation. The WADA Code provides for several if this then that conditions and this is one of those.

A third anti-doping rule violation: If a second anti-doping rule violation has occurred and the person has not been sanctioned with a lifetime ban, but was given one of the other ban periods as discussed in the previous slide, and he or she commits a third anti-doping rule violation, there will always be a lifetime period of ineligibility. Exception: if the third violation fulfills the conditions for elimination or reduction of the period of ineligibility under Article 10.5 or 10.6, or involves a violation of Article 2.4. In these particular cases, the period of ineligibility shall be from 8 years to lifetime.

There are some cases in which there may be possible sanction reductions and we shall discuss those now. Exceptions and reductions in sanctions. Although the strict liability principle applies, the code allows for reduced sanctions if the athlete can demonstrate no significant fault or negligence or no fault or negligence. No significant fault or negligence: athletes may receive reduced sanctions if they can prove that they took all reasonable steps to avoid a violation but were still exposed to a banned substance inadvertently.

No fault or negligence: in very rare cases, if athletes can prove they were completely unaware and could not have reasonably known about the prohibited substances, they can avoid sanctions entirely.

There are several controversies and criticisms surrounding the strict liability principle. They say it is very harsh as it can lead to sanctions even in cases of unintentional ingestion. However, advocates argue that this approach is necessary for a fair and effective anti-doping system that treats all athletes equally and discourages doping by closing potential excuses for violations. Even in cases where athletes can show that a physician prescribed a substance without their knowledge of its prohibited status, the athlete remains responsible under strict liability. This principle reinforces the high standard of caution expected from athletes who must ensure that all medical personnel involved are aware of anti-doping rules.

Contaminated products: Contaminated products are those products in which, if there is a prohibited substance, it is not disclosed on the product label and the presence of the prohibited substance is not accessible in information available in a reasonable online search. If a contaminated product result is proven, the provisional suspension may be eliminated. However, the burden is on the athlete to prove that the ADRV is likely to have involved a contaminated product. The standard of proof required is low and it is upon the athlete to prove that he was taking a particular supplement which was contaminated and this particular ADRV has occurred because of the contaminated product and he has to prove beyond reasonable doubt that the bottle of supplement which he is consuming has the banned substance which has resulted in the ADRV. When he is able to produce all this evidence, the panel—what does the panel do? They review the

evidence submitted by the athlete. They evaluate the evidence and they take a decision based upon the available possible evidence. If the contaminated product is proven, the sanction may be reduced from zero to 24 months based upon the degree of fault. Two conditions have to be met. The contaminated product has to be proven beyond all reasonable doubt and there should be no significant fault. The degree of fault of the athlete depends upon the circumstances, the athlete's experience, access to the relevant information, caution exercised by the athlete, advice from the third party, product itself, source of the product, declaration on the doping control form and the objective of the intake.

Prohibited association, now this is another clause which generally involves association. This is another clause which generally involves athlete support personnel. A prohibited association is a condition in which an athlete support personnel has been banned for a particular anti-doping rule violation in a particular sport. And it has been found that the same person is now participating in another sport in some capacity. This is called prohibited association. And if an athlete is found indulging in prohibited association with a person who is under a period of ineligibility in another sport, he or she is also liable to be sanctioned. It frequently involves athlete support personnel. Generally, it is out of the jurisdiction of the anti-doping organization and it is a very unsatisfactory situation. There are two possibilities for the prohibited association. It may be a professional association or it may be sports-related association. Professional meaning non-sport related in some business-related capacity.

There are three disqualifying statutes in prohibited association. If the individual is serving a period of ineligibility. If the individual has been convicted or found in a criminal, disciplinary or professional proceeding to have engaged in conduct which would have constituted a violation of anti-doping rules. Or is serving as a front or intermediary for an individual described in Article 2.10.1 or Article 2.10.2. What is the procedure? If the National Anti-Doping Organization becomes aware of a potential case, they will inform the athlete in writing. The disqualifying status of the athlete support personnel is disclosed to the athlete in writing. What are the potential consequences of this prohibited association? The athlete may avoid this association or the athlete may inform the athlete support personnel that they can explain within 15 days that they do not meet any of the criteria. If the athlete can establish that the athlete support personnel does not meet any of the criteria, or they cannot reasonably avoid the association—that means the athlete support personnel is a relative of the athlete, or athlete can prove that the association is not professional or is not related to sports—then if the explanations are found satisfactory, then the case is dropped. If the explanations are not satisfactory and the associations continue, then the National Anti-Doping Organization may start a results management process.

Substantial assistance or as commonly called in legal terms, turning approver against another accomplice or another person. The principle is that one person will discover or establish an ADRV by a third party. There is a code definition of substantial assistance and the athlete may be informed on the charge letter that this possibility is available. Who has the jurisdiction for this? The result management authority who decides the final appellate decision. And WADA and International Federation may agree after a final appellate decision. Condition. The information provided has to result in an ADRV or it has to result in discovery or establishing an ADRV by a third party. The information provided must be credible and it should constitute a sufficient basis upon which a case can be brought forward. That means information must be credible and evidence must be provided of an ADRV. Full disclosure. The athlete or the approver has to give a written and signed statement and they shall disclose all the information they possess, including their own ADRV. It involves full cooperation in which they will have to testify in a hearing against their teammates and they will have to assist in investigation against their teammates. The extent of the sanction or the extent of the sanction reduction depends upon their own ADRV, depends upon the nature of the information provided and the relevance of the substantial assistance. There may be reinstatement, there may be no reduction in the sanction and the reinstatement can be appealed by the WADA.

Physician's fault: Article 10.5 addresses circumstances under which an athlete may reduce the sanction if they prove that they bore no fault or no significant fault or negligence in an anti-doping rule violation. This article is critical when the athlete attributes their positive test to the actions or mistakes of a physician or other medical person. However, case law has consistently ruled that even if a physician makes an error, the responsibility often remains with the athlete. For instance, in the Tory Edwards case, the case highlighted that allowing athletes to fully shift responsibility onto a physician would undermine anti-doping efforts. Athletes are requested. Athletes are required to demonstrate they took all necessary precautions, showing a high degree of diligence to avoid violations. There is a narrow application of this physician's fault clause. The Code applies Article 10.5 narrowly, emphasizing that reducing sanctions should only be done in truly exceptional cases. This narrow approach aims to prevent athletes from using physician error as a loophole to avoid sanctions. As established in case law, an athlete's reliance on a physician is not enough to automatically escape responsibility under strict liability clause.

Criteria for reduced sanctions based on physician fault. To benefit from Article 10.5, the athletes must fulfill specific criteria. Proof of medical treatment. Athlete must show that they were receiving treatment from a qualified physician which led to the positive result. Documentation such as medical records and prescriptions are essential to establish this. Lack of intent or negligence. Athletes would need to prove that they exercised utmost caution in their relationship with the physician. This includes choosing a reputable

physician, disclosing their status as an athlete subject to anti-doping rules and confirming that the prescribed substances do not contain banned components. Under Article 10.5, athletes are expected to be proactive and informed in their interactions with healthcare providers. This duty of diligence extends to selecting competent medical personnel. They must select healthcare providers knowledgeable about anti-doping regulations, particularly in sports medicine. Simply put, athletes must go to sports medicine doctors. Communicating anti-doping requirements. Athletes should inform their physicians about their obligations under the anti-doping code to avoid being prescribed prohibited substances inadvertently. Verifying prescribed substances. It is crucial for athletes to verify all medications and treatments with respect to the prohibited list. Even if a physician is responsible for prescribing a substance, the athlete should independently confirm its compliance with the anti-doping rules. There are several apps and online websites which are available, which help the athlete know your medicine, etc.

Take-home message. The sanctions are stringent for repeat violations and usually involve a lifetime ban. Period of ineligibility may be reduced in rare cases. Contaminated supplements have to be proven beyond doubt. Prohibited association has to be credibly disproved. Substantial assistance may reduce ineligibility periods subject to level of assistance. Physician's fault is accepted in rare cases only.

These are my references, ladies and gentlemen. Strongly urge you to go through them. I seem to have finished. So this concludes Lecture 4 of Week 6 of this course on Anti-Doping Awareness for Sports. Thank you for your listening and for your patience, ladies and gentlemen. Thank you and Jai Hind.