
Call for WADA

WADA – Anti-doping Organization in Sport or Moral Police?

As is well known, under section 4.3 of the WADA Code, a substance or method is considered for inclusion on the prohibited list if WADA determines that the substance or method meets any two of the following three criteria:

1. Medical or other scientific evidence, pharmacological effect or experience that the substance or method ... has the potential to enhance or enhances sport performance;
2. Medical or other scientific evidence, pharmacological effect or experience that the use of the substance or method represents an actual or potential health risk to the athlete; and
3. WADA's determination that the use of the substance or method violates the spirit of sport.

The fact that a substance or method may be prohibited on the ground that it meets any two of the three criteria reveals an obvious anomaly: that a substance may be banned on the grounds that it is held to be damaging to the health of athletes and is contrary to the vague and undefined 'spirit of sport' even though the substance may have no performance-enhancing effect. We hold that it is nonsensical that an athlete can be banned under WADA rules for consuming a drug which has no performance-enhancing effects, *for it is precisely the performance-enhancing nature of a substance which is the central defining characteristic of doping*; in effect, this regulation means that athletes can be punished under the anti-doping code for a form of behaviour – the use of recreational drugs which are not performance-enhancing – which is not cheating and which does not constitute 'doping' in any meaningful sense of the term.

It is clear that WADA's third criterion for inclusion – that the use of drugs is against the vague concept of the 'spirit of sport' – performs a "catchall function"; it provides an argument for the banning of recreational drugs whose use cannot be banned on sporting grounds, that is on grounds of performance-enhancement. It is important that we, and WADA, are clear about the implications of this rule: since WADA may suspend an athlete for the use of recreational drugs which are not performance-enhancing WADA is, in effect,

using anti-doping regulations in order to police personal lifestyles and social activities which are unrelated to sporting activities.

There is no clear basis on which sporting authorities can legitimately claim the right to regulate the private lifestyles – as opposed to the sporting activities – of athletes; indeed, this claim was questioned by a key working group which reported to the 1999 Lausanne World Conference on Doping in Sport which was convened by the IOC and which led to the establishment of WADA. Prior to that conference, the IOC appointed four working groups to prepare reports for that conference. The *Report of the Working Group on the Protection of Athletes* noted that:

While the IOC has a strong interest in preserving the fairness of Olympic competition, and while it has strong grounds in sport ethics for seeking to eliminate doping, it is on far riskier ground if it seeks to mandate moral rules unrelated to sport. It is not clear why sport, or the Olympic Movement, should be part of a general campaign to eliminate, for instance, marijuana use. If sport federations or the IOC wish to take a stand against recreational drug-use (or tobacco, or alcohol abuse, or other social problems) then this should be done through codes of conduct rather than rules that govern sport.

The distinguished sports philosophers Angela Schneider and Robert Butcher – the former of whom is also an Olympic silver medallist – have been even more direct in their comments. Writing prior to the establishment of WADA, at a time when the IOC led the fight against doping, they wrote:

Quite simply, the IOC has no good grounds for including marijuana on a restricted list, or for testing for its use. The mandate of the IOC for drug testing is to ensure that athletes compete fairly. The rules against drug use are to ban performance-enhancing substances – marijuana is not a performance-enhancing substance, so the IOC has no business testing for it.

Some people might argue that the use of marijuana is illegal (and perhaps also immoral) and so the IOC is justified in testing for its use. But what possible grounds are there for suggesting that the IOC has a role in enforcing the law? The IOC is a sports organization, not a law-enforcement agency. Similar arguments apply if we suggest that the IOC has a role to play in enforcing morals. In all sorts of areas, community moral standards are contested and open to debate. There are many people throughout the world who believe that homosexuality is morally wrong – yet it would be both absurd and immoral to

suggest that the IOC has a role in testing for, and prohibiting from competition, anyone who has engaged in same-sex sexual activity.

In 2007, in his evidence to a House of Commons Select Committee in 2007, the then British Minister of Sport, Richard Caborn expressed a similar view. Asked about the use of recreational drugs by athletes, Caborn said: 'What is WADA there for? WADA is there to root out cheats in sport. That is their core business'. He did not feel it was part of WADA's role to be, as he put it, in the 'business of policing society'.

We agree. WADA is now undertaking a two year review of the WADA Code and we believe it is time for WADA to reconsider the ban on the use of recreational drugs which are not performance-enhancing. We believe that it is no part of the responsibility of WADA to police the personal lifestyles of athletes; indeed, not only does WADA have no right to do so but this also diverts WADAs' limited resources away from their core business, which is to prevent athletes from using those drugs which can unfairly enhance sporting performance.

We therefore call on WADA to remove non-performance enhancing recreational drugs, such as marijuana, from its Prohibited List of Substances and to stop testing for such drugs at sporting competitions.

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