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Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
TTY (202) 225-6852

<http://reform.house.gov>

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July 27, 2005

Mr. Gary Bettman
Commissioner
National Hockey League
1251 Avenue of the Americas
New York, New York 10020

Mr. Robert Goodenow
Executive Director
National Hockey League Player's Association
777 Bay Street, Suite 2400
Toronto, Ontario M5G 2C8
Canada

Dear Commissioner Bettman and Mr. Goodenow,

On July 25, 2005 the Committee on Government Reform received a copy of the National Hockey League's (NHL) new Performance Enhancing Substances Program. It is our understanding that the new program has been ratified by the NHL and the National Hockey League Player's Association (NHLPA) as part of the new Collective Bargaining Agreement.

We understand that prior to this agreement, the NHL had no testing program for performance enhancing drugs. In that sense, the new policy represents a positive step. However, we have serious concerns about the effectiveness of this new policy. It appears to contain numerous loopholes that might allow players to circumvent the testing regime. The policy contains no provisions for an independent administrator. It has an inadequate testing process. And it does not adequately address all performance-enhancing drugs. All of these deficiencies could undermine public confidence that the NHL is free of performance enhancing drugs.

As you know, our Committee has passed legislation that would ensure that all major professional sports leagues meet Olympic standards for the testing of performance-enhancing drugs and the punishment of athletes who use them. The weaknesses in your new agreement underscore the need for federal legislation.

Our concerns are detailed below.

Inadequate Testing Procedures

The Collective Bargaining Agreement states that players “will be subject to up to two (2) no-notice tests during the period from the start of training camp through the end of the regular season.”¹

This provision alone contains numerous problems. First, a requirement of “up to” two tests per year is no requirement at all. Under such a policy, some players may not be tested at all. Second, the provision caps testing frequency at two per year. Thus even if a player is tested, a player can be certain that he will not be tested again after the second test. Third, the new policy restricting testing to training camp and the regular season means that no players will be tested at all for approximately four months of the year. This period without testing coincides with the playoffs (the most important competition of the season), and the off season (when players are not under the supervision of team doctors who might recognize the symptoms of performance enhancing drug use). Additional loopholes, such as requirements that “tests be conducted ... on the day of a scheduled practice” and a ban on game-day testing, further weaken the testing provisions.²

Inadequate List of Prohibited Substances

The new NHL policy fails to provide a clear and comprehensive list of prohibited substances. Moreover, the policy specifically disallows testing for designer steroids. These provisions considerably weaken the effort to eliminate performance enhancing drugs from the NHL.

According to the new policy, the “NHL and the NHLPA shall confer and agree upon the prohibited substances to be included on the list.”³ Although this list is to be based upon the prohibited list of the World Anti-Doping Agency (WADA), there is no requirement that substances banned by WADA be banned by the NHL. Indeed, there is no requirement that any substances be added to the list. By requiring agreement by the League and the Player’s Association before a substance can be added to the list, the agreement appears to give both groups veto power over including any item on the NHL List of Prohibited Substances. In effect, the process of deciding what drugs to test becomes an extension of the bargaining process.

The new policy explicitly does not allow testing for designer steroids. This is a particularly troublesome provision. These designer steroids are created in the lab specifically to evade detection and are marketed directly to elite athletes. The Olympics bans these substances, enforcing the ban by conducting tests on stored samples from athletes as novel drugs are identified. In contrast, the new NHL policy states “there shall be no retesting of samples based

¹ NHL Collective Bargaining Agreement, § 47.6.

² *Id.*

³ *Id.*, at § 47.5.

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on newly discovered substances not included on the Prohibited Substances List at the time of the original testing.”⁴

Just last week, Victor Conte, the founder of the BALCO lab, pled guilty in a case involving the distribution of the designer steroid THG to top, world-class athletes.⁵ Yet under the new policy, the use of the next THG would appear to be permissible in the NHL.

Lack of Independent Administration

According to the new labor agreement, the NHL testing program is to be administered by a “Program Committee.”⁶ This committee has broad authority. Its responsibilities include selecting and contracting with sample collection authorities and testing laboratories, recommending substances to be added to the prohibited list, developing notification procedures for positive results, and overseeing the evaluation and treatment of players with positive test results.⁷

The Olympics handed over administration of its testing process to an independent body, the World Anti-Doping Agency. This ensures the credibility of the program by guaranteeing that the individuals administering it have no vested interest in the outcome. In contrast, the NHL’s Program Committee consists of representatives of the League, the NHL Player’s Association, and consulting experts nominated by the League and the Player’s Association. Rather than relying on a credible and independent body to run the testing program, the new Program Committee appears to be simply an extension of the collective bargaining process.

Other Questions

The text of the new drug policy also raises additional questions. For example, the policy states that a player shall be subject to a “permanent” ban for a third offense, yet it allows the player to apply for reinstatement after a two-year period.⁸ In addition, the policy fails to clearly ban the use of masking agents or other efforts to cheat on drug tests.⁹

Hearings held by our Committee have indicated that there is a clear link between the use of performance enhancing drugs by elite athletes and their use by teenage athletes. This fact – and the difficulty professional sports leagues have encountered in developing effective drug testing policies through the collective bargaining process – has driven our legislative effort to establish a tough, uniform standard for professional sports. Your efforts to develop your own policy appear to be inadequate and to provide additional evidence of the need for our legislation.

⁴ *Id.*

⁵ *Balco’s Conte Makes Deal*, Associated Press (July 15, 2005)

⁶ NHL Collective Bargaining Agreement, § 47.2.

⁷ *Id.*

⁸ *Id.*, § 47.6(c).

⁹ *Id.*, § 47.2(d). The policy bans only “performance enhancing substances,” not other substances than can be used to mask their presence.

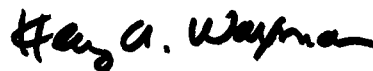
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We would be most interested in your views on the issues we have raised in this letter.

Sincerely,



Tom Davis
Chairman



Henry A. Waxman
Ranking Minority Member