

ANADO Legal Note # 2 May 16, 2008

WADC 2009 IMPLEMENTATION: SEVEN “OTHER” RULES NADOS MUST CONSIDER

A number of Articles in the World Anti-Doping Code 2009 (WADC 2009) refer to the possibility, advisability or requirement for other sport rules that would complement WADC 2009 principles and provisions. NADOs should consider how best to address these matters, either in their national anti-doping rules or in other sport rules that apply domestically.

Here is a list of those “other” rules, reasons for them and the relevant WADC 2009 provisions:

1. Rules to prohibit association with a person serving a period of ineligibility

Association with an individual serving a period of ineligibility is not an anti-doping rule violation (although many think it should be). However, NADOs and other anti-doping organizations may have their own rules that would, for example, prevent an athlete from continuing to be coached by an individual under suspension or continuing to be treated by a doctor under suspension.

ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

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[COMMENT TO ARTICLE 2: THE CODE DOES NOT MAKE IT AN ANTI-DOPING RULE VIOLATION FOR AN ATHLETE OR OTHER PERSON TO WORK OR ASSOCIATE WITH ATHLETE SUPPORT PERSONNEL WHO ARE SERVING A PERIOD OF INELIGIBILITY. HOWEVER, A SPORT ORGANIZATION MAY ADOPT ITS OWN RULES WHICH PROHIBIT SUCH CONDUCT.] (emphasis added)

2. Rules to deny membership in a sport organization to someone who has committed an act that would have been an anti-doping rule violation has they been subject to anti-doping rules at the time.

To prevent, for example, an individual with a criminal conviction for importing or trafficking a prohibited substance from subsequently joining a sport organization, at least without some “cooling off” period equivalent to the period of suspension for the relevant anti-doping rule violation.

7.6 RETIREMENT FROM SPORT.

IF AN *ATHLETE* OR OTHER *PERSON* RETIRES WHILE A RESULTS MANAGEMENT PROCESS IS UNDERWAY, THE *ANTI-DOPING ORGANIZATION* CONDUCTING THE RESULTS MANAGEMENT PROCESS RETAINS JURISDICTION TO COMPLETE ITS RESULTS MANAGEMENT PROCESS. IF AN *ATHLETE* OR OTHER *PERSON* RETIRES BEFORE ANY RESULTS MANAGEMENT PROCESS HAS BEGUN, THE *ANTI-DOPING ORGANIZATION* WHICH WOULD HAVE HAD RESULTS MANAGEMENT JURISDICTION OVER THE *ATHLETE* OR OTHER *PERSON* AT THE TIME THE *ATHLETE* OR OTHER *PERSON* COMMITTED AN ANTI-DOPING RULE VIOLATION, HAS JURISDICTION TO CONDUCT RESULTS MANAGEMENT.

[COMMENT TO ARTICLE 7.6: CONDUCT BY AN ATHLETE OR OTHER PERSON BEFORE THE ATHLETE OR OTHER PERSON WAS SUBJECT TO THE JURISDICTION OF ANY ANTI-DOPING ORGANIZATION WOULD NOT CONSTITUTE AN ANTI-DOPING RULE VIOLATION BUT COULD BE A LEGITIMATE BASIS FOR DENYING THE ATHLETE OR OTHER PERSON MEMBERSHIP IN A SPORTS ORGANIZATION.] (emphasis added)

3. Rules for imposing a sanction on an athlete support personnel or other persons who assist an athlete violate the prohibition against participation during a period of ineligibility.

There is no anti-doping rule violation of “substantially assisting an athlete to avoid ineligibility,” although it might be argued that WADC 2009 Article 2.8 (which covers a wide range of misconduct, including “aiding and abetting”) might cover the circumstance. To be certain, NADOs and other anti-doping organizations are invited to have rules to ensure periods of ineligibility are respected and applied by all those subject to anti-doping rules.

10.10.2 VIOLATION OF THE PROHIBITION OF PARTICIPATION DURING *INELIGIBILITY*.

WHERE AN *ATHLETE* OR OTHER *PERSON* WHO HAS BEEN DECLARED *INELIGIBLE* VIOLATES THE PROHIBITION AGAINST PARTICIPATION DURING *INELIGIBILITY* DESCRIBED IN ARTICLE 10.10.1, THE RESULTS OF SUCH PARTICIPATION SHALL BE *DISQUALIFIED* AND THE PERIOD OF *INELIGIBILITY* WHICH WAS ORIGINALLY IMPOSED SHALL START OVER AGAIN AS OF THE DATE OF THE VIOLATION. THE NEW PERIOD OF *INELIGIBILITY* MAY BE REDUCED UNDER ARTICLE 10.5.2 IF THE *ATHLETE* OR OTHER *PERSON* ESTABLISHES HE OR SHE BEARS *NO SIGNIFICANT FAULT OR NEGLIGENCE* FOR VIOLATING THE PROHIBITION AGAINST PARTICIPATION. THE DETERMINATION OF WHETHER AN *ATHLETE* OR OTHER *PERSON* HAS VIOLATED THE PROHIBITION AGAINST PARTICIPATION, AND WHETHER A REDUCTION UNDER ARTICLE 10.5.2 IS APPROPRIATE, SHALL BE MADE BY THE *ANTI-DOPING ORGANIZATION* WHOSE RESULTS MANAGEMENT LED TO THE IMPOSITION OF THE INITIAL PERIOD OF *INELIGIBILITY*.

[COMMENT TO ARTICLE 10.10.2: IF AN ATHLETE OR OTHER PERSON IS ALLEGED TO HAVE VIOLATED THE PROHIBITION AGAINST PARTICIPATION DURING A PERIOD OF INELIGIBILITY, THE ANTI-DOPING ORGANIZATION WHICH HAD RESULTS MANAGEMENT RESPONSIBILITY FOR THE ANTI-DOPING RULE VIOLATION WHICH RESULTED IN THE PERIOD OF INELIGIBILITY SHALL DETERMINE WHETHER THE ATHLETE OR OTHER PERSON VIOLATED THE PROHIBITION AND, IF SO, WHETHER THE ATHLETE OR OTHER PERSON HAS ESTABLISHED GROUNDS FOR A REDUCTION IN THE RESTARTED PERIOD OF INELIGIBILITY UNDER ARTICLE 10.5.2. DECISIONS RENDERED BY ANTI-DOPING ORGANIZATIONS UNDER THIS ARTICLE MAY BE APPEALED PURSUANT TO ARTICLE 13.2.]

WHERE AN ATHLETE SUPPORT PERSONNEL OR OTHER PERSON SUBSTANTIALLY ASSISTS AN ATHLETE IN VIOLATING THE PROHIBITION AGAINST PARTICIPATION DURING INELIGIBILITY, AN ANTI-DOPING ORGANIZATION WITH JURISDICTION OVER SUCH ATHLETE SUPPORT PERSONNEL OR OTHER PERSON MAY APPROPRIATELY IMPOSE SANCTIONS UNDER ITS OWN DISCIPLINARY RULES FOR SUCH ASSISTANCE.] (emphasis added)

4. Rules to provide for financial sanctions

The WADC 2009 imposes only some financial consequences for anti-doping rule violations (Article 10.8.1 requiring repayment of prize money and Article 10.10.3 requiring withholding sport or government financial support during a period of ineligibility). But there is no monetary fine or other direct financial penalty for an anti-doping rule violation required by the WADC 2009. However, NADOs and other anti-doping organizations may impose direct financial sanctions through their own rules.

10.12 IMPOSITION OF FINANCIAL SANCTIONS.

ANTI-DOPING ORGANIZATIONS MAY, IN THEIR OWN RULES, PROVIDE FOR FINANCIAL SANCTIONS ON ACCOUNT OF ANTI-DOPING RULE VIOLATIONS. HOWEVER, NO FINANCIAL SANCTION MAY BE CONSIDERED A BASIS FOR REDUCING THE PERIOD OF INELIGIBILITY OR OTHER SANCTION WHICH WOULD OTHERWISE BE APPLICABLE UNDER THE CODE.

[COMMENT TO ARTICLE 10.12: FOR EXAMPLE, IF A HEARING PANEL WERE TO FIND IN A CASE THAT THE CUMULATIVE EFFECT OF THE SANCTION APPLICABLE UNDER THE CODE AND A FINANCIAL SANCTION PROVIDED IN THE RULES OF AN ANTI-DOPING ORGANIZATION WOULD RESULT IN TOO HARSH A CONSEQUENCE, THEN THE ANTI-DOPING ORGANIZATION'S FINANCIAL SANCTION, NOT THE OTHER CODE SANCTIONS (E.G., INELIGIBILITY AND LOSS OF RESULTS), WOULD GIVE WAY.] (emphasis added)

5. Rules permitting an International Federation to assume jurisdiction for matters when a National Federation has inappropriately delayed.

Some NADOs conduct results management for National Federations in cases where an adverse analytical finding results from an international test and the International Federation rules “down-load” results management to the national level. NADOs should ensure that they are aware of International Federation requirements for timely commencement and completion of results management, including any hearing needed to determine a violation, and that they are aware of any International Federation rules that might lead to a case being taken out of the NADO’s hands if it takes too long.

13.3 FAILURE TO RENDER A TIMELY DECISION BY AN *ANTI-DOPING ORGANIZATION*.

WHERE, IN A PARTICULAR CASE, AN *ANTI-DOPING ORGANIZATION* FAILS TO RENDER A DECISION WITH RESPECT TO WHETHER AN ANTI-DOPING RULE VIOLATION WAS COMMITTED WITHIN A REASONABLE DEADLINE SET BY *WADA*, *WADA* MAY ELECT TO APPEAL DIRECTLY TO *CAS* AS IF THE *ANTI-DOPING ORGANIZATION* HAD RENDERED A DECISION FINDING NO ANTI-DOPING RULE VIOLATION. IF THE *CAS* HEARING PANEL DETERMINES THAT AN ANTI-DOPING RULE VIOLATION WAS COMMITTED AND THAT *WADA* ACTED REASONABLY IN ELECTING TO APPEAL DIRECTLY TO *CAS*, THEN *WADA*’S COSTS AND ATTORNEYS FEES IN PROSECUTING THE APPEAL SHALL BE REIMBURSED TO *WADA* BY THE *ANTI-DOPING ORGANIZATION*.

[COMMENT TO ARTICLE 13.3: GIVEN THE DIFFERENT CIRCUMSTANCES OF EACH ANTI-DOPING RULE VIOLATION INVESTIGATION AND RESULTS MANAGEMENT PROCESS, IT IS NOT FEASIBLE TO ESTABLISH A FIXED TIME PERIOD FOR AN ANTI-DOPING ORGANIZATION TO RENDER A DECISION BEFORE WADA MAY INTERVENE BY APPEALING DIRECTLY TO CAS. BEFORE TAKING SUCH ACTION, HOWEVER, WADA WILL CONSULT WITH THE ANTI-DOPING ORGANIZATION AND GIVE THE ANTI-DOPING ORGANIZATION AN OPPORTUNITY TO EXPLAIN WHY IT HAS NOT YET RENDERED A DECISION. NOTHING IN THIS ARTICLE PROHIBITS AN INTERNATIONAL FEDERATION FROM ALSO HAVING RULES WHICH AUTHORIZE IT TO ASSUME JURISDICTION FOR MATTERS IN WHICH THE RESULTS MANAGEMENT PERFORMED BY ONE OF ITS NATIONAL FEDERATIONS HAS BEEN INAPPROPRIATELY DELAYED.]

6. Rules to protect confidential information and data privacy

NADOs must have their own rules to protect confidential information, to investigate improper disclosure and to discipline any employee or agent of the NADO who improperly discloses confidential information. NADOs are advised to review their employment contracts and agreements with volunteers to ensure this important matter is addressed. Best practice is to require legally enforceable signed confidential undertakings from all individuals associated with the NADO as a condition of employment or volunteering.

In addition to complying with the forthcoming WADA International Standard for the protection of privacy, NADOs must also ensure that they comply with domestic laws for the protection of electronic data and personal privacy laws.

14.1.5 CONFIDENTIALITY.

THE RECIPIENT ORGANIZATIONS SHALL NOT DISCLOSE THIS INFORMATION BEYOND THOSE *PERSONS* WITH A NEED TO KNOW (WHICH WOULD INCLUDE THE APPROPRIATE PERSONNEL AT THE APPLICABLE NATIONAL OLYMPIC COMMITTEE, NATIONAL FEDERATION, AND TEAM IN A *TEAM SPORT*) UNTIL THE *ANTI-DOPING ORGANIZATION* WITH RESULTS MANAGEMENT RESPONSIBILITY HAS MADE PUBLIC DISCLOSURE OR HAS FAILED TO MAKE PUBLIC DISCLOSURE AS REQUIRED IN ARTICLE 14.2 BELOW.

[COMMENT TO ARTICLE 14.1.5: EACH ANTI-DOPING ORGANIZATION SHALL PROVIDE, IN ITS OWN ANTI-DOPING RULES, PROCEDURES FOR THE PROTECTION OF CONFIDENTIAL INFORMATION AND FOR INVESTIGATING AND DISCIPLINING IMPROPER DISCLOSURE OF CONFIDENTIAL INFORMATION BY ANY EMPLOYEE OR AGENT OF THE ANTI-DOPING ORGANIZATION.] (emphasis added)

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14.6 DATA PRIVACY.

WHEN PERFORMING OBLIGATIONS UNDER THE *CODE*, *ANTI-DOPING ORGANIZATIONS* MAY COLLECT, STORE, PROCESS OR DISCLOSE PERSONAL INFORMATION RELATING TO *ATHLETES* AND THIRD PARTIES. **EACH *ANTI-DOPING ORGANIZATION* SHALL ENSURE THAT IT COMPLIES WITH APPLICABLE DATA PROTECTION AND PRIVACY LAWS WITH RESPECT TO THEIR HANDLING OF SUCH INFORMATION**, AS WELL AS THE *INTERNATIONAL STANDARD* FOR THE PROTECTION OF PRIVACY THAT *WADA* SHALL ADOPT TO ENSURE *ATHLETES* AND NON-*ATHLETES* ARE FULLY INFORMED OF AND, WHERE NECESSARY, AGREE TO THE HANDLING OF THEIR PERSONAL INFORMATION IN CONNECTION WITH ANTI-DOPING ACTIVITIES ARISING UNDER THE *CODE*. (emphasis added)

7. Additional disciplinary rules for athlete support personnel

NADOs and other anti-doping organizations may impose addition rules against misconduct my athlete support personnel that does not constitute an anti-doping rule violation as defined by the WADC 2009 but which is, nonetheless, contrary to the spirit and principles of doping-free sport. The example given is a rule to sanction a coach with too many doped athletes, as being negligent in supervision of those athletes, even if the coach did not actively “aid and abet” the doping.

23.2.2 THE FOLLOWING ARTICLES (AND CORRESPONDING COMMENTS) AS APPLICABLE TO THE SCOPE OF THE ANTI-DOPING ACTIVITY WHICH THE *ANTI-DOPING*

ORGANIZATION PERFORMS MUST BE IMPLEMENTED BY *SIGNATORIES* WITHOUT SUBSTANTIVE CHANGE (ALLOWING FOR ANY NON-SUBSTANTIVE CHANGES TO THE LANGUAGE IN ORDER TO REFER TO THE ORGANIZATION'S NAME, SPORT, SECTION NUMBERS, ETC.):

- ARTICLE 1 (DEFINITION OF DOPING)
- ARTICLE 2 (ANTI-DOPING RULE VIOLATIONS)
- ARTICLE 3 (PROOF OF DOPING)
- ARTICLE 4.2.2 (SPECIFIED SUBSTANCES)
- ARTICLE 4.3.3 (WADA'S DETERMINATION OF THE *PROHIBITED LIST*)
- ARTICLE 7.6 (RETIREMENT FROM SPORT)
- ARTICLE 9 (AUTOMATIC *DISQUALIFICATION* OF INDIVIDUAL RESULTS)
- ARTICLE 10 (SANCTIONS ON INDIVIDUALS)
- ARTICLE 11 (*CONSEQUENCES* TO TEAMS)
- ARTICLE 13 (APPEALS) WITH THE EXCEPTION OF 13.2.2 AND 13.5
- ARTICLE 15.4 (MUTUAL RECOGNITION)
- ARTICLE 17 (STATUTE OF LIMITATIONS)
- ARTICLE 24 (INTERPRETATION OF THE *CODE*)
- APPENDIX 1 - DEFINITIONS

NO ADDITIONAL PROVISION MAY BE ADDED TO A *SIGNATORY'S* RULES WHICH CHANGES THE EFFECT OF THE ARTICLES ENUMERATED IN THIS ARTICLE.

[COMMENT TO ARTICLE 23.2.2: NOTHING IN THE CODE PRECLUDES AN ANTI-DOPING ORGANIZATION FROM ADOPTING AND ENFORCING ITS OWN SPECIFIC DISCIPLINARY RULES FOR CONDUCT BY ATHLETE SUPPORT PERSONNEL RELATED TO DOPING BUT WHICH DOES NOT, IN AND OF ITSELF, CONSTITUTE AN ANTI-DOPING RULE VIOLATION UNDER THE CODE. FOR EXAMPLE, A NATIONAL OR INTERNATIONAL FEDERATION COULD REFUSE TO RENEW THE LICENSE OF A COACH WHEN MULTIPLE ATHLETES HAVE COMMITTED ANTI-DOPING RULE VIOLATIONS WHILE UNDER THAT COACH'S SUPERVISION.] (emphasis added)

Conclusion

It remains to be seen whether the mutual recognition article of the WADC 2009 (Article 15.4) will apply to actions taken by NADOs or other anti-doping organization according to the “other” rules addressed in this note. At the very least, ANADO members should agree to do so. ANADO should encourage other anti-doping organizations to take the same positive approach, and to encourage WADA to amend the WADC to ensure this happens.