

ANADO Legal Note 15

Time for Strict Liability for Coaches and Team Doctors?

The strict liability of athletes for any prohibited substance found in their samples is the bedrock of anti-doping rules. “It is each Athlete’s responsibility to ensure that no Prohibited Substance enters his or her body” Article 2.1.1 of the World Anti-Doping Code commands. The Comment to the Article explains:

Under the strict liability principle, an Athlete is responsible, and an anti-doping rule violation occurs, whenever a Prohibited Substance is found in an Athlete’s Sample. The violation occurs whether or not the Athlete intentionally or unintentionally Used a Prohibited Substance or was negligent or otherwise at fault.

Why shouldn’t this principle be extended to the two groups who work most closely with those athletes: their coaches and their team doctors?

The recent doping cases involving Swedish Paralympic curler Glenn Ikonen, Jamaican Olympic and world 100 metre champion Shelly-Ann Fraser, and U.K. shot putter Rachel Wallader, all seem to cry out anti-doping action against a team doctor or coach. Ikonen’s team doctor did not properly check his athlete’s heart medication to determine if it contained a prohibited substance. It did. Ikonen lost a Paralympic Bronze medal. Fraser’s coach gave her a painkiller before a race when the medication prescribed by a doctor didn’t work. The result was an in-competition positive at a Diamond League meet in China and a highly-visible provisional suspension at the following meet in Lausanne. Wallader’s coach gave her an over-the-counter supplement containing a prohibited stimulant that also led to an adverse analytical finding and provisional suspension. The coach is reported to claim being given “categorical assurance” by the drug company that it was “perfectly legal.” We can all recall too many other similar cases. What were these “professionals” thinking?

It only seems fair that they be held as equally responsible for their carelessness as their athletes are for their adverse analytical findings. In fact, as we all know, current anti-doping programs do an indifferent job of ensuring that members of an athlete’s entourage are held accountable for the role they played in the doping of their athletes. In how many cases is the sanctioning of the athlete followed by the sanctioning of the team doctor or coach who supplied the product with the prohibited substance, or who failed to properly educate and counsel their athletes (and I do not mean just giving them the annual anti-doping talk at a training camp), or who were not vigilant when behaviour or physiological changes, or improvements in performance, suggested doping? Not many.

At the very least, we should always be determining what was the role or the possible negligence of the team doctor or the coach. There is no valid reason that they can continue to participate in the sport system on the assumption they were not at fault or negligent. We don’t give athletes that same benefit.

And why shouldn’t anti-doping rules now go a step further? We hold athletes responsible regardless of lack of fault or lack of negligence. Shouldn’t team doctors and coaches be held responsible regardless of

their lack of fault or lack of negligence? If an athlete commits an anti-doping rule violation, why should the team doctor automatically continue to treating other athletes as if nothing had happened? Instead, why shouldn't they automatically be sanctioned too? Why should the coach be permitted to continue coaching other athletes as if they were not at fault? Or even if they were not at fault? Athletes lose medals and prizes despite no fault or no negligence. Why not their team doctors and coaches? Why do we hold team doctors and coaches to a lesser standard of responsibility than the athletes they treat and guide?

If we can provide athletes with the fair opportunity to argue exceptional circumstances or to provide substantial assistance, we can provide exactly the same opportunities to team doctors and coaches to explain why they should not be held fully accountable for the doping by those under their supervision.

Imagine the possible reduction in doping.

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