



A NEW AND REVISED WORLD ANTI-DOPING CODE PART I

THIS IS THE FIRST IN A THREE PART SERIES THAT WILL BE OFFERED TO IPOD READERS. AS PROMISED IN THE FIRST IPOD EDITION OF THIS YEAR, THE ISSF IPOD SHALL FOCUS ON VARIOUS TOPICS OR SECTIONS WITHIN THE CODE THAT HAVE BEEN MODIFIED FOR IMPLEMENTATION IN 2015 SO THAT ALL OUR IPOD READERS WILL BE FULLY INFORMED AND WELL-VERSED ON ALL THE CHANGES THAT SHALL BE BROUGHT TO THE CODE, TO ALL INTERNATIONAL STANDARDS, AND AS A RESULT, TO THE ISSF ANTI-DOPING RULES NEXT YEAR.

THE FIRST TWO INSTALMENTS OF THE SERIES SHALL IDENTIFY AND EXPLAIN SOME OF THE MOST NOTABLE CHANGES BEING BROUGHT TO THE CODE AND THE INTERNATIONAL STANDARDS, WHILE THE THIRD INSTALMENT SHALL PROVIDE INSIGHT ON HOW COMPLIANCE TO NEW CODE WILL ALTER THE ISSF'S ANTI-DOPING RULES AND CONVERSELY AFFECT US ALL.

WE HOPE THIS WILL BE A USEFUL EXERCISE FOR ALL OF YOU.

THE 2015 WORLD ANTI-DOPING CODE

As you are aware, the Code Review Process culminated with the approval of the new Draft Code at the World Conference in Doping in Sport in Johannesburg, South Africa in November 2013.

Version 4.0 of the new Draft Code, as presented in Johannesburg, was the fourth published version of the 2015 Code. In between the published versions, more than 50 different working drafts were considered based on various comments and recommendations from multiple sources.

Indeed, as was the case with the 2003 and 2009 Codes, stakeholder input was invaluable in the Code review process which crowned Version 4.0 of the 2015 Code as the final version approved by all Signatories and for implementation.

Throughout the process and in each of the drafts that were published, many modifications, deletions and additions were brought to the 2009 Code. In some cases, changes from the 2009 Code were made in an early published version and then changed back in a later version based on continuing stakeholder feedback. (For example, there had been an initial proposal to eliminate the B Sample analysis in the results management process in the first draft and this was later decided against and reflected in the later drafts).

In several other cases, changes were made to make the Code language in order for it to be consistent with the legal opinion on Code enforceability provided by Judge Jean-Paul Costa, the former President of the European Court of Human Rights.

In the end, 2,269 changes can be seen between the 2009 Code and Version 4.0 of the 2015 Code. All of these changes are reflected in the document, "Version 4.0 2015 Code redlined to 2009 Code" which is posted on WADA's website. This document can be downloaded at <http://www.wada-ama.org>.

As the first instalment of our three-part series, this IPOD shall contemplate the 2015 Code and:

1. Offer insight on human rights issues that have affected how some of the Code provisions have been modified;
2. Discuss some general changes that was brought to the content of the Code as a whole;
3. Enumerate some specific and important changes that have been brought both to the provisions dealing with anti-doping rule violations as well as the provisions dealing sanctions imposed as a result of anti-doping rule violations.

1. PRINCIPLES OF PROPORTIONALITY AND HUMAN RIGHTS

In connection with both the 2003 and 2009 Codes, WADA obtained legal opinions on the enforceability of various aspects of the Code. The same approach was taken in connection with drafting the 2015 Code. WADA engaged Judge Costa to opine on various aspects of the Code, particularly as they relate to the principles of proportionality and human rights. The drafting of several articles found in Code Version 4.0 were influenced by the

dialogue between WADA and Judge Costa. Judge Costa's opinion can be found on WADA's website. http://www.wada-ama.org/Documents/World_Anti-Doping_Program/WADP-The-Code/Code_Review/Code%20Review%202015/WADC-Legal-Opinion-on-Draft-2015-Code-3.0-EN.pdf

Additionally, and on point, a number of stakeholders suggested that the applicability of the principles of proportionality and human rights should be expressly stated in the Code. Accordingly, several Code provisions have been modified to better take those principles into account.

Here are a few:

- In the "Purpose of the Code" at page 1: "The Code has been drafted giving consideration to the principles of proportionality and human rights."
- In the "Introduction" at page 5: Code proceedings are "intended to be applied in a manner which respects the principles of proportionality and human rights."
- In Article 14.3.2: The mandatory public disclosure of anti-doping rule violations need not occur until after the final appellate decision. Under the current Code, disclosure was required after hearing.
- In Article 14.3.6 and Definition of Athlete: Mandatory public disclosure of anti-doping rule violations is not required for Minors or Athletes who are not International- or National-Level Athletes.
- The Definition of No Significant Fault: A Minor need not establish how a Prohibited Substance entered his or her system to establish No Significant Fault.

- The “Definition of the word Athlete”: Some countries choose to test lower-level Athletes and even fitness club participants. The definition of Athlete has been clarified to provide that where a National Anti-Doping Organization elects to test individuals who are neither national- nor international-level Athletes, not all of the Code requirements are applicable.

2. THE 2015 CODE CONTENT IN GENERAL IS SHORTER AND CLEARER.

On the one hand, many of the comments provided to WADA related to the fact that stakeholders wanted the Code to be clearer and to address the many different types of situations which may arise so that there are no loopholes in the realization of a harmonious application of the Code.

On the other hand, everyone wished that the Code could be a shorter and less technical document.

Therefore, keeping these two sometimes opposing goals in mind, many modifications were brought to the Code in order to make it clearer and more succinct.

For example:

- Articles 10.4, 10.5, and 10.6:
In the Code provisions addressing No Fault, No Significant Fault, special rules applicable to Specified Substances and Contaminated Products and other grounds upon which a sanction may be reduced have been shortened and reorganized for a more clear presentation.
- Article 10.7:
Rather than the current lengthy (and complicated) chart and explanation that can now found in the Code, the period of Ineligibility applicable for multiple violations has been restated as a short formula.
- Article 23.2.2:
The reference to including the comments to the Code as mandatory has been deleted from the Introduction. Article 23.2.2 makes it clear that while comments will always be used for interpreting the Code, they need not be incorporated verbatim into each Signatory’s rules.

Although these changes are not necessarily substantive, without risking prompting a loss of scope, they have resulted in the creation of a revised document that is shorter and more technical.

The ISSF certainly appreciates these objectives as we too have striven to modify the ISSF Anti-Doping Rules to make them more user friendly in the last few years. Accordingly, the same modifications that were brought into the 2015 Code to render it shorter, clearer and more intelligible will equally be reflected in the ISSF Anti-Doping Rules in 2015.

3. MODIFIED PROVISIONS RELATING TO SANCTIONS AND ANTI-DOPING RULE VIOLATIONS

The 2015 Code provides for longer periods of Ineligibility for real cheats, and more flexibility in sanctioning in other circumstances. Various provisions have been modified or added to this end.

THE 4 YEAR SANCTION

There was a strong consensus among stakeholders, in particular Athletes, that intentional cheaters should be Ineligible for a period of four years rather than just two.

Under the current Code, there is the opportunity for a four-year period of Ineligibility for an Adverse Analytical Finding but only if the Anti-Doping Organization can show that “Aggravating Circumstances” exist in the particular case. However, in the more than four years since that provision has been part of the current Code, it has been rarely used or unsuccessfully applied.

Therefore, as of 2015, Anti-Doping Organizations will be able to sanction intentional cheaters to a four year ban more regularly without having to show that aggravating circumstances exist. This will render four year sanctions for doping a more common occurrence.

In light of the importance of this modified provision and its potential impact on many Athletes, for ease of reference, Article 10.2 now reads as follows:

10.2 Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance and the Anti-Doping Organization can establish that the antidoping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

10.2.3 As used in Articles 10.2 and 10.3, the term “intentional” is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute

or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be arguably presumed to be not “intentional” if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered “intentional” if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

To put it more simply:

For Presence, Use or Possession of a Non-Specified Prohibited Substance, the period of Ineligibility will now be four years, unless the Athlete can establish that the violation was not intentional.

For Specified Substances, the period of Ineligibility will now be four years, but only where the Anti-Doping Organization can prove that the violation was intentional. (Intentional means that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute an anti-doping rule violation and manifestly disregarded that risk.)

In other words, if on the one hand you are using a substance with the intent to cheat – you will likely be suspended for four years. And on the other hand, if you unintentionally get caught with a substance in your system, your sanction will likely range between a warning to a two year ban. The burden of proof will shift from you to your Anti-Doping Organization depending on the Prohibited Substance in question.

GREATER LENIENCY FOR ATHLETES WHO REALLY WERE NOT TRYING TO CHEAT

There was also stakeholder consensus that more flexibility in sanctioning should be permitted in certain circumstances where the Athlete can demonstrate that he or she was not cheating. Article 10.5.1 has been modified to this end.

Article 10.5.1 now reads that where the Athlete can establish No Significant Fault for an Adverse Analytical Finding involving a Contaminated Product, the period of Ineligibility may range from at a minimum a reprimand and at a maximum, two years. However, in order for the period of Ineligibility involving a Specified Substance to be reduced below two years the Athlete must now establish No Significant Fault.

So when an athlete can show that he or she unintentionally consumed a contaminated product and later finds out it contained a prohibited substance, he or she may now benefit from greater leniency in sanctioning.

NEW ANTI-DOPING RULE VIOLATION:

In order to prohibit athletes or other persons from associating with unsavoury characters, a new article, Article 2.10 "Prohibited Association", has been created and added into the Code as a new anti-doping rule violation that can lead to a sanction.

The premise behind this new anti-doping rule violation is that Athletes and other Persons cannot and must not work with coaches, trainers, physicians or other Athlete Support Personnel who are Ineligible on account of an anti-doping rule violation or who have been criminally convicted or professionally disciplined in relation to doping.

Some examples of the types of association which are prohibited include: obtaining training, strategy, technique, nutrition or medical advice; obtaining therapy, treatment or prescriptions; providing any bodily products for analysis; or allowing the Athlete Support Person to serve as an agent or representative. Prohibited association need not involve any form of compensation.

So, any Athlete or Person who associates with an individual who is addressed in the provision (ie: someone ineligible under the Rules, or currently being suspended or disciplined for unsavoury behaviour, or who holds a criminal record) will thereby be violating an anti-doping rule and risks being sanctioned for up to 2 years.

PROMPT ADMISSION OF AN ANTI-DOPING RULE VIOLATION NO LONGER AUTOMATICALLY RESULTS IN REDUCTION IN SANCTION:

A prompt admission of an anti-doping rule violation will no longer automatically reduce an anti-doping rule violation in half as it does currently.

Article 10.6.3 now requires the approval of both WADA and the Anti-Doping Organization with results management authority to approve the reduction for prompt admission. *In other words, if you intentionally used a*

substance to cheat but then admit to it, you will not necessarily get your sanction reduced in half, or from four years to two years. Under the new Code, in order for any reduction of sanction to be applied, both your International Federation (or NADO) and WADA have to approve the reduction.

MODIFICATIONS TO NON-ANALYTICAL ANTI-DOPING RULE VIOLATIONS:

In Article 2.5, the text of the violation for Tampering has been expanded to include intentionally interfering or Attempting to interfere with a Doping Control Official, providing fraudulent information to an Anti-Doping Organization, or intimidating or Attempting to intimidate a potential witness.

Article 2.5 was expanded to ensure that any situation in which an athlete intentionally intends to cheat the system or to circumvent the procedures, he or she will not be able to slip through the cracks of the system.

Further, in Article 2.9, the text of the violation for Complicity has been expanded to include "assisting" and "conspiring" involving an anti-doping rule violation, as well as the prohibition on participation during a period of Ineligibility.

Article 2.9 now sanctions any behaviour that could be linked with aiding or strategizing with athletes to cheat in any way.

Finally, in Article 2.3, the text has been expanded to include "evading" sample collection.

Under Article 2.3 there is no longer a doubt that if an athlete tries to avoid being tested, in any way, this action may result in an anti-doping rule violation.

ANTI-DOPING RULE VIOLATIONS AS A RESULTS OF WHEREABOUTS FAILURES

As you know, the current Code and International Standard or Testing state that any combination of three filing failures or missed tests within eighteen months can result in an anti-doping rule violation.

In the course of the Code Review process, the

consensus was that twelve months is ample time for an Anti-Doping Organization to accumulate three whereabouts failures on an Athlete who is trying to avoid Testing and that shortening the window reduces the risk that Athletes who are simply careless in handling their paperwork will be found to have committed anti-doping rule violations.

Under Article 2.4 of the new Code, and as shall be mirrored in the new International Standard for Testing, the window in which an Athlete may accumulate three whereabouts filings (Filing Failures or Missed Tests) which trigger an anti-doping rule violation has been reduced from eighteen months to twelve months.

All Athletes in an RTP should therefore be extra vigilant in ensuring that their whereabouts information is filed in a timely accurate manner and that they are always present for testing at the time indicated in that same information: the window for collecting three strikes is smaller than before.

This concludes this first instalment of our Three-Part Series on the New 2015 World Anti-Doping Code.

The next instalment in this Series shall focus on some changes affecting support personnel who are involved in doping as well as modifications being brought to test planning and the importance now placed upon intelligence and investigations.

In the meantime if you have any questions on the 2015 Code, please do not hesitate to send them to us at doris@issf-sports.org so that we can address them as part of this Series.

Janie Soublière BSS, LL.M. LL.B.

Legal Consultant, Anti-Doping in Sport



 **Targets made
in Switzerland**

KROMER PRECISION TARGETS



P.O. Box 429
CH-5600 Lenzburg 1
Switzerland
Phone: ++41 62 886 33 30
Fax: ++41 62 886 33 31
E-Mail: schiessen@kromer.ch
Internet: www.kromer.ch

Official supplier of the International Shooting Sport Federation
Official supplier of Swiss Shooting Federation SSV

