

ANTI-DOPING LAWS IN ATHLETICS

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Abstract

Anti-doping policies have been implemented for competitors in Olympic games and athletes of all different sports. The core values of these rules are implemented to ensure health, fair play, and solidarity in the athletic community. The World Anti-Doping Agency works alongside the U.S. Anti-Doping Agency to produce an updated list every January of substances that are considered illegal in sports which fall under its authority. Some examples of these drugs are anabolic agents, hormone modulators, and all forms of marijuana. With drugs such as cannabinoids slowly becoming legal in more states for recreational use, this can create confusion between athletes who may live in these places. Although marijuana may not be internationally a criminalizing drug, this does not mean that it will be excluded from the list of banned substances. How will the World Anti-Doping Agency handle drugs that are becoming legal?

Introduction

Anti-doping policies have been implemented for competitors in Olympic games and athletes of all different sports. The core values of these rules are implemented to ensure health, fair play, and solidarity in the athletic community. The World Anti-Doping Agency (“WADA”) works alongside the U.S. Anti-Doping Agency to produce an updated list every January of substances that are considered illegal in sports which fall under its authority. Some examples of these drugs are anabolic agents, hormone modulators, and all forms of marijuana.¹ With drugs such as cannabinoids slowly becoming legal in more states for recreational use, this can create confusion between athletes who may live in these places. Although marijuana may not be, internationally, a criminalizing drug, this does not mean that it will be excluded from the list of banned substances. Similarly, certain substances prohibited by WADA can be found in medications used for common illnesses or conditions. Because WADA updates the list of illegal substances for athletes every year, what happens if an athlete is taking a drug for a medical condition when the drug is added to the list? This may leave athletes having to choose between their career or stopping their medical treatment. How will WADA handle the prohibition on certain drugs that are becoming legal?

¹ *Marijuana FAQ*, United States Anti-Doping Agency, <https://www.usada.org/athletes/substances/marijuana-faq/>, (last visited Apr 8, 2022).

Cannabinoids in the World of Athletics

Cannabinoids are a category of drugs that bind to the receptors of the endocannabinoid system.² They affect the body by altering mood, appetite, pain, memory, and perception. The use of medical marijuana is becoming a popular alternative to medications in the United States; thirty-seven states currently approve of medically regulated use.³ In the state of Florida, cannabis was considered illegal until Governor Rick Scott signed the Compassionate Medical Cannabis Act into law.⁴ This granted patients permission to use a strain of medical marijuana known as “Charlotte’s Web;” this oil contains low levels of tetrahydrocannabinol and high levels of cannabidiol.⁵ At first, this treatment was approved only for individuals with cancer, epilepsy and amyotrophic lateral sclerosis.⁶ The state is now slowly expanding their Florida Medical Marijuana Legalization Initiative to offer this treatment option to more patients with other conditions. With the increasing use of this substance for medical purposes, state lawmakers are enacting laws to

² Id.

³ *State Medical Cannabis Laws*, Feb. 2022, National Conference of State Legislatures, <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>, (last visited Apr 8, 2022).

⁴ Id.

⁵ *The History of Medical Marijuana in Florida*, Sanctuary Wellness Institute, <https://sanctuarywellnessinstitute.com/cannabis/florida/legislative-history.php>, (last visited Apr 8, 2022).

⁶ Id.

protect individuals in the workplace. The Medical Cannabis Anti-Discrimination Employee Protection is a statutory act currently in place in fifteen states.⁷ This means that employers cannot consider medical marijuana use as a factor in hiring or firing employees.⁸ The Recreational Cannabis Anti-Discrimination Employee Protection is also a statutory act that is active in two states.⁹ This state law protects employees in case of a failed drug test, regardless of whether the marijuana was for medical use or recreational use. For athletes, competing in professional sports is a career. Therefore, it is debatable whether athletes should be protected under these employment statutes.

Although many states are decriminalizing marijuana for recreational and medical use, WADA strictly states that regardless of state laws where athletes may reside, marijuana is prohibited in competition.¹⁰ Professional athletes come from countries all around the globe and compete in many different locations throughout the year. Laws regarding the use of marijuana for medical and/or recreational use differ from place to place. As such, prohibiting the use of this drug by athletes competing

⁷ Iris Hentze, I., *Cannabis & Employment Laws*, Nov. 2021, National Conference of State Legislatures, <https://www.ncsl.org/research/labor-and-employment/cannabis-employment-laws.aspx>, (last visited Apr 8, 2022).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Marijuana FAQ*, United States Anti-Doping Agency, <https://www.usada.org/athletes/substances/marijuana-faq/>, (last visited Apr 8, 2022).

nationally and internationally creates solidarity and a clear standard expected from all athletes.

Drugs that are on the WADA prohibited-substance list are typically considered in athletics as performance-enhancing substances. Research has shown that cannabis is not performance enhancing in the classical sense when an athlete is engaged in the competitive sport, it is more so a health or safety concern. In one study, twenty healthy individuals who consumed a form of cannabis were compared with a group of individuals who consumed a placebo.¹¹ Results showed no extra strength and no changes in expiratory flow. The only positive effect that was shown with cannabis use was improved sleep and recovery.¹² This can help athletes recover quicker in between sporting events, possibly resulting in enhanced performance after rest.

However, cannabis continues to be on the prohibited substance list for professional athletes due to its health implications. An individual's career as a successful athlete requires responsibility in taking care of one's body. Research shows that impaired health such as lung damage, behavioral changes, and reproductive, cardiovascular, and immunological effects are

¹¹ Mark Ware, Dennis Jensen, Amy Barrette, Alan Vernec, Wayne Derman, *Cannabis and the Health and Performance of the Elite Athlete*, Sep. 2018, *Clinical Journal of Sport Medicine*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6116792/>, (last visited Apr 8, 2022).

¹² *Id.*

commonly associated with the use of the substance.¹³ The behavioral effects of cannabis vary compared to other drugs because it is classified into multiple categories; a stimulant, sedative, tranquilizer and hallucinogen.¹⁴ Marijuana has also been linked to slower reaction times and poor executive function, which would harm an athlete's performance.¹⁵ Executive function is defined by the mental processes that control our ability to plan, focus, remember information, and multitask.¹⁶ These effects pose risks on oneself and others because it negatively affects skills that are needed for basic functioning.

Social norms and the role of an athlete serve as further reasoning behind a universal disapproval of marijuana in the athletic community. Cannabis falls under the category of an illegal, criminalizing drug in many places. Approving this substance for use by athletes who are in competition contradicts the objectives and spirit of sport. WAPA states that the “use of illicit drugs that are harmful to health and that may have performance-

¹³ Marilyn Huestis, Irene Mazzoni, Olivier Rabin, *Cannabis in Sport*, Nov. 2011, National Institute of Health, <https://pubmed.ncbi.nlm.nih.gov/21985215/>, (last visited Apr 8, 2022).

¹⁴ *Id.*

¹⁵ *Marijuana FAQ*, United States Anti-Doping Agency, <https://www.usada.org/athletes/substances/marijuana-faq/>, (last visited Apr 8, 2022).

¹⁶ *Executive Function and Self-Regulation*, Harvard University, <https://developingchild.harvard.edu/science/key-concepts/executive-function/>, (last visited Apr 8, 2022).

enhancing properties is not consistent with the athlete as a role model for young people around the world”.¹⁷ Although there are laws being passed to protect people in the workforce from any discrimination due to a positive drug test, the career of an athlete may not be relevant to this protection. A career as an athlete in sports comes with a level of publicity; many adolescents admire and look up to certain athletes. Some of the values in competition include ethics, fair play, respect for rules, and solidarity; doping contradicts these values.¹⁸

Anti-Doping Sports Bill

In 2019, the United States Senate passed a bill known as the Rodchenkov Anti-Doping Act. The purpose of this act is to impose criminal sanctions on people involved in doping schemes at international sporting events.¹⁹ This means that not only athletes will have consequences for doping, but also coaches, staff, or individuals who participate in these fraudulent acts will face criminal charges. The Rodchenkov Anti-Doping Act also works alongside WADA to “assist its fight against doping” and

¹⁷ Marilyn Huestis, Irene Mazzoni, Olivier Rabin, *Cannabis in Sport*, Nov. 2011, National Institute of Health, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6116792/>, (last visited Apr 8, 2022).

¹⁸ *Id.*

¹⁹ *Rodchenkov Anti-Doping Act of 2019*, H.R. 835, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/835/text>, (last visited Apr 8, 2022).

provides restitution for victims of these fraud conspiracies.²⁰

Grigory Rodchenkov, the act's namesake, was the director of anti-doping at a laboratory in Russia during the 2014 Olympic Games.²¹ He committed numerous fraudulent acts such as participating in bribery and tampering with urine samples during drug tests. WADA described him as the "heart" of positive drug test coverups.²² In an interview with the *New York Times*, Rodchenkov said that "doping athletes was a part of his job and his laboratory would have stopped receiving funding if he had not done it".²³ He claimed that Russian authorities were involved with these doping schemes, and after making this public Rodchenkov fled in fear of his safety to the United States.

Although the Rodchenkov Anti-Doping Act was enacted to prevent doping schemes, concern has been shown about how it can have a negative impact on global anti-

²⁰ *Id.*

²¹ *Russian doping: Who is whistleblower Grigory Rodchenkov?*, Jul. 2016, BBC News, <https://www.bbc.com/news/world-europe-36833962>, (last visited Apr 8, 2022).

²² Robertson, J., *The Independent Commission Report #1*, Nov. 2015, https://www.wada-ama.org/sites/default/files/resources/files/wada_independent_commission_report_1_en.pdf, (last visited Apr 8, 2022).

²³ *Russian doping: Who is whistleblower Grigory Rodchenkov?*, Jul. 2016, BBC News, <https://www.bbc.com/news/world-europe-36833962>, (last visited Apr 8, 2022).

doping efforts.²⁴ For example, the act is only applied to sporting events at the international level, excluding U.S. professional sport leagues and college athletics. Instead, the act applies only during events such as the Olympic Games. This discrepancy creates inconsistencies in doping policies across the globe. WADA promotes the harmonization of anti-doping rules at the core of its program.²⁵ It has questioned why the original draft included all U.S. professional sport leagues and college athletes but were later removed as revisions were made to the bill.²⁶ Removing certain athletics, rather than having a single set of rules for all competition, “may lead to overlapping laws in different jurisdictions.”²⁷ To create solidarity amongst all sports and competitions to keep clear standards of what is expected of all athletes, it would be vastly beneficial to adapt the Rodchenkov Anti-Doping Act to apply to all athletic competitions, both amateur and professional.

²⁴ *U.S. Senate Passes Anti-Doping Sports Bill*, Nov. 2020, Reuters, <https://www.reuters.com/article/us-doping-usa/u-s-senate-passes-anti-doping-sports-bill-idUSKBN27X03H>, (last visited Apr 8, 2022).

²⁵ *Id.*

²⁶ Robertson, J., *The Independent Commission Report #1*, Nov. 2015, https://www.wada-ama.org/sites/default/files/resources/files/wada_independent_commission_report_1_en.pdf, (last visited Apr 8, 2022).

²⁷ *U.S. Senate Passes Anti-Doping Sports Bill*, Nov. 2020, Reuters, <https://www.reuters.com/article/us-doping-usa/u-s-senate-passes-anti-doping-sports-bill-idUSKBN27X03H>, (last visited Apr 8, 2022).

Conclusion

Although laws regarding marijuana are evolving throughout the United States, certain communities likely will keep their policies unchanged. In the athletic community, there is a need for solidarity amongst the rules of competition. Any substances that can potentially enhance an athlete's performance goes against the spirit of sport. Marijuana creates a gray area as state legislative bodies continue to decriminalize this drug. Although in medical and non-medical studies cannabis has been shown to provide numerous benefits, especially in cases of disease, red flags remain when it comes to an athlete's consumption. The possible effects, such as impaired executive function and cardiovascular health, do not align with the values of sport. Professional athletics should demonstrate health and fair play. To maintain solidarity, there needs to be universal laws against doping that do not always reflect regional laws. The United States should expand the scope of the Rodchenkov Anti-Doping Act to include all American sports leagues and not just competitions at the international level.